



DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

RIN 1210-AB97

Annual Reporting and Disclosure

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains amendments to Department of Labor (DOL) regulations relating to annual reporting requirements under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The amendments contained in this document conform the DOL reporting regulations to revisions to the Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan being published in this issue of the Federal Register in a separate Notice of Final Forms Revisions (NFFR) jointly by DOL, the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC). Conforming changes also are being made to the requirements for the summary annual report. The regulatory amendments in this rule and revisions in the NFFR affect employee benefit plans, plan sponsors, administrators, and service providers to plans subject to annual reporting requirements under ERISA and the Internal Revenue Code.

DATES: *Effective date:* This final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

Applicability Date: All regulatory amendments are applicable for plan years beginning on or after January 1, 2023, for the 2023 Form 5500 Annual Return/Report of Employee Benefit Plan.

FOR FURTHER INFORMATION CONTACT: Janet Song, Florence Novellino or Colleen Brisport Sequeda, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8500 (this is not a toll-free number).

Customer service information: Individuals interested in obtaining information from the Department of Labor concerning Title I of ERISA and employee benefit plans may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor’s website (www.dol.gov/agencies/ebsa).

I. SUPPLEMENTARY INFORMATION:

A. Background

Titles I and IV of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code), generally require pension and other employee benefit plans to file annual returns/reports concerning, among other things, the financial condition and operations of the plan. Filing a Form 5500 Annual Return/Report of Employee Benefit Plan (Form 5500) or, if eligible, a Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan (Form 5500-SF), together with any required schedules and attachments (together “the Form 5500 Annual Return/Report”), in accordance with their instructions, generally satisfies these annual reporting requirements.¹

ERISA section 103 and 104 broadly set out annual financial reporting requirements for employee benefit plans under Title I of ERISA. The Form 5500 Annual Return/Report for Title I purposes is promulgated pursuant to DOL regulations under the ERISA provisions authorizing limited exemptions and simplified reporting and disclosure for welfare plans under ERISA section 104(a)(3), simplified annual reports under ERISA section 104(a)(2)(A) for pension plans that cover fewer than 100 participants, and alternative methods of compliance for all pension

¹ References to the “Form 5500 Annual Return/Report” in this final rule or in the accompanying NFFR may include, depending on the context, the Form 5500 or the Form 5500-SF. As used in this document, the term does not include the Form 5500-EZ, Annual Return of A One Participant (Owners/Partners and Their Spouses or A Foreign Plan) Retirement Plan (Form 5500-EZ). The Form 5500-EZ is a return required under the Code, not Title I of ERISA.

plans under ERISA section 110. The Form 5500 Annual Return/Report, and related instructions and regulations, are also promulgated under the DOL's general regulatory authority in ERISA sections 109 and 505.²

In the United States, there are an estimated 2.5 million health plans,³ an estimated 673,000 other welfare plans,⁴ and approximately 747,000 private pension plans.⁵ These plans cover roughly 152 million private sector workers, retirees, and dependents,⁶ and have estimated assets of \$12 trillion.⁷ The Form 5500 Annual Return/Report is a critical enforcement, compliance, and research tool for the DOL, the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) (together "Agencies"). The Form 5500 Annual Return/Report serves as the principal source of information and data available to the Agencies concerning the operations, funding, and investments of approximately 864,000 pension and welfare benefit plans that file.⁸ The Form 5500 Annual Return/Report is also an important source of information and data for use by other Federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The Form 5500 Annual Return/Report also serves as the primary public disclosure document for participating employers, plan participants and beneficiaries, and the public to monitor the operations of plans, including multiple-employer plans (MEPS) and group filing arrangements. Accordingly, the Form 5500 Annual Return/Report is essential to each Agency's enforcement, research, and

² The Form 5500 Annual Return/Report filings are also information collections for the Agencies, subject to a separate clearance process under the Paperwork Reduction Act.

³ Source: U.S. Department of Labor, EBSA calculations using the 2021 Medical Expenditure Panel Survey, Insurance Component (MEPS-IC), the Form 5500 and 2019 Census County Business Patterns.

⁴ Source: U.S. Department of Labor, EBSA calculations using non-health welfare plan Form 5500 filings and projecting non-filers using estimates based on the non-filing health universe.

⁵ Source: U.S. Department of Labor, EBSA. Private Pension Plan Bulletin: Abstract of 2020 Form 5500 Annual Reports.

⁶ Source: U.S. Department of Labor, EBSA calculations using the Auxiliary Data for the March 2021 Annual Social and Economic Supplement to the Current Population.

⁷ EBSA projected ERISA-covered pension, welfare, and total assets based on the 2020 Form 5500 filings with the U.S. Department of Labor (DOL), reported SIMPLE assets from the Investment Company Institute (ICI) Report: The U.S. Retirement Market, Second Quarter 2022, and the Federal Reserve Board's Financial Accounts of the United States Z1 September 9, 2022.

⁸ Estimates are based on 2020 Form 5500 filings. Welfare plans with fewer than 100 participants that are unfunded or insured (do not hold assets in trust) are generally exempt from filing a Form 5500. Therefore, while the DOL estimates there are 2.5 million health plans and 673,000 non-health welfare plans, respectively only 63,000 and 21,000 of these plans filed a 2020 Form 5500.

policy formulation programs, as well for the regulated community, which makes increasing use of the information as more capabilities develop to interact with the data electronically.

Recent legislative and regulatory changes affecting MEPs and similar arrangements are spurring the current need to update the Form 5500 Annual Return/Report and related regulations. The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) included various provisions designed to improve the private employer-based retirement system.⁹ Among other things, the SECURE Act included changes designed to simplify retirement plan administration for certain eligible defined contribution plans and added provisions to the Code relating to MEPs, including MEPs with pooled plan providers, and adopted provisions under Title I of ERISA that designated these MEPs with pooled plan providers as pooled employer plans (PEPs).

On September 15, 2021, the Agencies published a notice of proposed forms revisions (NPFR) proposing amendments to the Form 5500 Annual Return/Report to implement annual reporting changes related to legislative provisions in the SECURE Act focused on MEPs and defined contribution group reporting arrangements (DCGs or DCG reporting arrangements) but also included other proposed reporting improvements. 86 FR 51488 (Sep. 15, 2021). The DOL simultaneously published a notice of proposed rulemaking (NPRM) setting forth proposed amendments to its Title I annual reporting regulations to implement the proposed forms revisions. 86 FR 51284 (Sep. 15, 2021). The NPFR and the NPRM are collectively referred to as the September 2021 proposal in this rule and the NFFR.

The Agencies received 114 comments on the September 2021 proposal. The comments, which were all posted on the DOL's website, generally focused on the proposed changes for the 2022 plan year forms and on future rulemakings.

⁹ The SECURE Act was enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94).

In December 2021, the DOL published a final forms revisions rulemaking that set forth a narrow set of changes to the instructions for the Form 5500 and Form 5500-SF, effective for plan years beginning on or after January 1, 2021. 86 FR 73976 (Dec. 29, 2021). Those instruction changes generally implemented annual reporting changes for MEPs, including PEPs, that were described in the September 2021 proposal. That document is referred to herein as Final Rule Phase I.

In May 2022, the Agencies published a second final forms revisions adopting certain aspects of the September 2021 proposal effective for plan years beginning on or after January 1, 2022. 87 FR 31133 (May 23, 2022). Those forms and instruction revisions generally implemented annual reporting changes for defined benefit plans on Schedules MB, SB and R, but also added certain plan characteristics codes for MEPs, including one to specifically identify PEPs, to the list of plan characteristics that must be used to describe the plan on the annual report. That document is referred to herein as Final Rule Phase II.

In Final Rule Phase II, the Agencies stated that the remaining proposed changes to the Form 5500 Annual Return/Report that were set forth in the September 2021 proposal would be addressed either in a further final forms revisions notice, or possibly re-proposed with modifications in a separate proposal as part of a broader range of improvements to the annual reporting requirements.¹⁰

The Agencies' Notice of Final Forms Revisions (NFFR) published concurrently in this issue of the Federal Register sets forth a detailed discussion of form and instruction changes that relate to these regulations. It also includes a discussion of elements from the September 2021 proposal that are being delayed for possible re-proposal as part of the Agencies' initiative to

¹⁰ As noted in the September 2021 proposal, DOL has a separate regulatory project on its semi-annual agenda to in coordination with the IRS and PBGC: (i) modernize the financial and other annual reporting requirements on the Form 5500 Annual Return/Report; (ii) continue an ongoing effort to make investment and other information on the Form 5500 Annual Return/Report more data mineable; and (iii) consider potential changes to group health plan annual reporting requirements, among other improvements that would enhance the Agencies' ability to collect employee benefit plan data in a way that best meets the needs of compliance projects, programs, and activities. See www.reginfo.gov for more information.

propose a more broad-based set of improvements to the Form 5500 Annual Return/Report. The discussions in the NFFR are incorporated into this final rule notice. The revisions to the DOL's reporting regulations being adopted in this document are needed for the DOL to implement, for ERISA Title I purposes, various forms and instructions revisions in the NFFR. The NFFR and this NFRM collectively represent Final Rule Phase III of the September 2021 proposal.

B. Discussion of the Revisions to 29 CFR Part 2520

1. Section 2520.103-1(a)

Section 2520.103-1 generally describes the content of the Form 5500 Annual Return/Report and includes a description of the content for a simplified report, limited exemption, or alternative method of compliance for ERISA-covered employee welfare and pension benefit plans, as applicable to satisfy annual reporting requirements under Title I of ERISA. This final rule amends § 2520.103-1(a) to add text cross-referencing to the DCG and GIA reporting options in §§ 2520.104-46, 2520.104-51, 2520.104a-6 and 2520.104a-9. It also adds a reference to “section 202 of the SECURE Act” in § 2520.103-1(a)(2) as authority for the consolidated report option under new §§ 2520.103-14 and 2520.104-51 for defined contribution group (DCG) reporting arrangements.

2. Sections 2520.103-1(b)(1) and 2520.103-1(c)(1)

Paragraphs (b) and (c) of § 2520.103-1 generally describe the contents of the annual report for large plans (generally those with 100 or more participants) and small plans (generally those with fewer than 100 participants). This final rule amends § 2520.103-1(b)(1), (c)(1) and (c)(2)(i) to add a new multiple-employer plan schedule, Schedule MEP, to the list of schedules and attachments required to be included with the Form 5500 or Form 5500-SF, as applicable, filed for MEPs.

3. Section 2520.103-1(c)(2)(ii)

Paragraph (c) of § 2520.103-1 describes the conditions under which an eligible small plan (generally with fewer than 100 participants) may file the Form 5500-SF. Consistent with the

proposed forms revisions to amend the Form 5500 Annual Return/Report published by the Agencies in the September 2021 proposal, and the final forms revisions published by the DOL in December 2021, this final rule adds § 2520.103-1(c)(2)(ii)(F) to state that MEPs that are PEPs as described in ERISA section 3(43) are not permitted to use the Form 5500-SF regardless of whether the plan meets the size and other requirements for filing a Form 5500-SF. The final rule also adds a new § 2520.103-1(c)(2)(ii)(G) to provide a similar prohibition on filing the Form 5500-SF for DCG reporting arrangements, as discussed in more detail below.

4. Sections 2520.103-5, 2520.103-10, 2520.103-14, 2520.104-51, 2520.104a-5 and 2520.104a-9 – Consolidated Form 5500 Annual Return/Report for plans participating in a DCG reporting arrangement

The final rule amends ERISA annual reporting regulations to implement the SECURE Act section 202 directive to the Secretary of Labor to jointly with the Secretary of the Treasury provide for a single, consolidated Form 5500 filing option that would satisfy the annual reporting obligations for the defined contribution pension plans participating in the DCG reporting arrangement.¹¹ Under this final rule, several conditions relating to the DCG reporting arrangement, the participating plans, and the content of the Form 5500 filing must be satisfied before the consolidated filing satisfies the annual reporting requirements of the separate participating plans. The NFFR describes those conditions in detail. The conditions also are set forth in the new regulations at 29 CFR 2520.103-14 and 2520.104-51.

With respect to the content requirements for a DCG consolidated Form 5500 filing, paragraph (b) of § 2520.103-14 provides that the consolidated DCG report would be required to include a Form 5500 “Annual Return/Report of Employee Benefit Plan” and various statements or schedules based on the characteristics and operations of the participating plans, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D

¹¹ The SECURE Act Section 202 uses the terms “combined,” “aggregated” and “consolidated” to describe the reporting option the IRS and DOL were directed to develop. This final rule and the related forms revisions notice generally uses the term “consolidated.”

(DFE/Participating Plan Information), Schedule DCG (Individual Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), and supplemental schedules referred to in 29 CFR 2520.103-10 with information aggregated for all the participating plans unless otherwise provided in the instructions to the Form 5500, and an independent qualified public accountant (IQPA) report and opinion for any individual participating plans that would be subject to the audit requirement if filing a separate Form 5500.¹² This would include separate financial statements described in ERISA section 103(a)(3)(A) and §2520.103-1(b)(2) if such financial statements are prepared in order for the IQPA to form the required opinions on the individual participating plans subject to the audit requirement.

Paragraph (c) of § 2520.103-14 makes clear that the DCG reporting arrangement must comply with the electronic filing requirements that apply to all plan filers and direct filing entities (DFE). *See* §2520.104a-2 and the instructions for the Form 5500 Annual Return/Report for electronic filing requirements. In addition, the paragraph emphasizes that the common plan administrator of all the participating plans that is filing the consolidated Form 5500 must maintain an original copy, with all required signatures, as part of its records (which also would be treated as records of each of the participating plans).

The final rule adds a new §2520.104-51 that authorizes the DCG reporting arrangement to file a consolidated report as an alternative method of compliance under ERISA section 110 for defined contribution pension plans that participate in DCG reporting arrangements. Specifically, filing of a complete and accurate consolidated Form 5500 for the DCG reporting arrangement

¹² After the final rule had been submitted to OMB on November 21, 2022, for review under Executive Order 12866, the SECURE Act 2.0 of 2022 (SECURE Act 2.0) was signed into law on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023, H.R. 2617, as amended. The SECURE Act 2.0 includes a specific direction to the DOL and the Treasury Department on audit requirements for the DCG consolidated Form 5500 reporting option. Specifically, section 345 of SECURE Act 2.0 provides that with respect to the IQPA audit provisions in section 103 of ERISA “any opinions required by section 103(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(a)(3)) shall relate only to each individual plan which would otherwise be subject to the requirements of such section 103(a)(3).” This final rule and the related final forms revisions being published concurrently include DCG plan-level audit provisions that are consistent with the SECURE Act 2.0 direction.

would relieve the administrator of each individual participating defined contribution pension plan that meets the requirements of paragraph (b) of § 2520.104-51 of the obligation to file an individual annual report under Title I of ERISA. This alternative method of compliance would be available only for a defined contribution pension plan in a plan year in which (i) such plan participates in a DCG reporting arrangement that meets the conditions of paragraph (c) of §2520.104-51; and (ii) the DCG reporting arrangement has filed with the Secretary of Labor, in accordance with new § 2520.104a-9, a complete and accurate consolidated annual report that meets the content requirements under new §2520.103-14. To make clear that the DCG reporting arrangement is a direct filing entity (DFE) that is submitting the consolidated Form 5500 on behalf of the participating plans, §2520.104-51(b)(2) provides that that the term “DCG reporting arrangement” shall be used in place of the term “plan” where it appears in §§2520.103-3, 2520.103-4, 2520.103-6, 2520.103-9, 2520.103-10 and elsewhere in subparts C and D of 29 CFR part 2520, as applicable and unless stated otherwise.

New §2520.104-51 also provides that the reporting relief for individual plans would apply only if all plans participating in the DCG reporting arrangement: (i) are individual account plans or defined contribution plans; (ii) have—(A) the same trustee meeting the requirements set forth in ERISA section 403(a) (“common trustee”); (B) the same one or more named fiduciaries designated in accordance with the requirements set forth in ERISA section 402(a) (“common named fiduciaries”), however, the employer/plan sponsor may be a named fiduciary of each employer’s own plan, provided that the other named fiduciaries under the plans are the same and common to all plans; (C) a designated administrator that is the same plan administrator for all the participating plans (“common plan administrator”); and (D) plan years beginning on the same date (“common plan year”); (iii) provide the same investments or investment options to participants and beneficiaries (“common investments or investment options”) (certain brokerage window arrangements would qualify as a common investment option under this final rule); (iv) not hold any employer securities at any time during the plan year, except this does not prohibit

investments in any employer's publicly traded securities held indirectly within one or more "common investments or investment options" available to participants and beneficiaries in all the DCG plans; (v) either be audited by an IQPA, or be eligible for the waiver of the annual examination and report of an IQPA under 29 CFR 2520.104-46; and (vi) may not be a multiemployer plan or a MEP (including association retirement plans, pooled employer plans and professional employer organization plans (PEO plans)).

Further, new §2520.104-51 expressly states that the alternative method of complying with the Title I annual reporting requirements would not relieve the administrator of the individual participating plans from any other requirement of Title I of ERISA, including, for example, the provisions that require plan administrators to furnish copies of the summary plan description to participants and beneficiaries (ERISA section 104(b)(1)), furnish certain documents to the Secretary of Labor upon request (ERISA section 104(a)(6)), and furnish a copy of a Summary Annual Report (SAR) to participants and beneficiaries of the plan (ERISA section 104(b)(3)). Section 2520.104-51(c)(2)(iii) provides that all plans participating in a DCG reporting arrangement must have a designated common plan administrator that is the same plan administrator for all the participating plans. The SECURE Act was not explicit on whether this was intended to require the same person to be the plan administrator under ERISA section 3(16)(A) for the purpose of meeting the annual reporting requirements for each participating plan or was intended to require that the same person be the plan administrator of each participating plan for all purposes under ERISA. The final rule requires that the same person sign the DCG filing as the plan administrator for each participating plan.¹³

New § 2520.104a-9 provides, as would be the case for all of the participating plans in the DCG reporting arrangement if they were filing individually, that the consolidated Form 5500 for

¹³ The Department solicited comments in the September 2021 proposal on whether the final rule should address whether individual plans participating in a DCG may have a separate statutory administrator responsible for other duties ERISA assigns to the plan administrator (e.g., distribution of summary plan descriptions). None of the commenters responded to this request. The Department is not addressing that issue in this final rule.

the DCG is due no later than the end of the seventh (7th) month after the end of the common plan year that all the plans must have in order to participate in a DCG reporting arrangement pursuant to the requirement in section 202 of the SECURE Act and the new regulation at § 2520.104-51. Conforming changes have been made to §§ 2520.103-5 and 2520.104a-5 to add a reference to the new § 2520.104a-9.

As noted above, section 110 of ERISA permits the DOL to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) the use of the alternative method is consistent with the purposes of ERISA and it provides adequate disclosure to plan participants and beneficiaries, and adequate reporting to the Secretary; (2) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate. The DOL believes that the final rule on DCG reporting arrangements meets those conditions, especially given the statutory direction in the SECURE Act to create such a reporting option.

As discussed below and in the NFFR, the final rule does not include an option under which a “small” DCG could file as a small plan, as the DOL solicited comments regarding the merits of this option and there were no commenters supporting a simplified reporting option for “small” DCG reporting arrangements. Accordingly, this final rule does not include an option under which such a “small” DCG could file as a small plan, and § 2520.103-1(c)(2)(ii) has been amended accordingly.

5. Section 2520.104b–10

Section 2520.104b–10 sets forth the requirements for the Summary Annual Report (SAR) appendix and prescribes formats for such reports. The DOL is updating this regulation to reflect the new filing option for DCG reporting arrangements and the addition of the new Schedule MEP and Schedule DCG to the 5500 Annual Report/Return. This includes adding a requirement

to the DOL's regulation that plans provide a brief description of the plan based on the plan characteristic codes listed for the plan on the Form 5500, including whether it is a defined contribution or defined benefit plan, and whether the plan is a pooled employer plan, another type of multiple-employer plan, a single-employer plan, or a plan participating in a DCG reporting arrangement, respectively. For plans participating in a DCG reporting arrangement, the regulation includes new language that plans in DCG reporting arrangements would use to advise participants that the plan participates in a reporting arrangement that files a consolidated Form 5500 Annual Report and explains that the SAR includes aggregate information on all the participating plans from the consolidated Form 5500. The text also notes that the DCG's consolidated Form 5500 includes a separate Schedule DCG that provides specific plan level information for each individual plan. The new regulatory language also includes text for plans to use that states a copy of the Schedule DCG and the Schedule MEP are available on request, as applicable. Finally, the new SAR language would state that a copy of the Form 5500 annual report filed for the plan or DCG is available online from EBSA via a DOL website at www.efast.dol.gov.

C. Applicability Date

All regulatory amendments are applicable for plan years beginning on or after January 1, 2023, for plans beginning with the 2023 Form 5500 Annual Return/Report of Employee Benefit Plan.

D. Regulatory Impact Analysis

1. Background and Need for Regulatory Action

The Form 5500 Annual Return/Report is the primary source of information and data available to the Agencies concerning the operations, funding, and investments of pension and welfare benefit plans covered by ERISA and the Code. Accordingly, the Form 5500 Annual Return/Report is essential to each Agency's enforcement, research, and policy formulation programs and is a source of information and data for use by other Federal agencies, Congress,

and the private sector in assessing employee benefit, tax, and economic trends and policies. The Form 5500 Annual Return/Report also serves as the primary means by which the operations of plans can be monitored by plan participants and beneficiaries and the general public. As discussed earlier in this document, the SECURE Act included various provisions designed to improve the private employer-based retirement system by seeking to make it easier for businesses to offer retirement plans, and for individuals to save for retirement, through the creation of new plan structure and reporting options. These new structures will require new annual reporting, which has resulted in the need to update the Form 5500 Annual Return/Report and related regulations.

In general terms these rules and form changes are: (1) adding a DCG consolidated reporting option; (2) adding Schedule MEP to collect MEP information; (3) adding certain new Code compliance questions; (4) changing the methodology for counting participants in defined contribution plans for purposes of determining eligibility for small plan reporting options; (5) Schedule H Breakout Categories for Administrative Expenses; (6) defined benefit plan reporting improvements on schedules SB; and (7) miscellaneous and conforming changes to forms and instructions.¹⁴

The DOL has examined the effects of these amendments as required by Executive Order 12866,¹⁵ Executive Order 13563,¹⁶ the Congressional Review Act,¹⁷ the Paperwork Reduction Act of 1995,¹⁸ the Regulatory Flexibility Act,¹⁹ section 202 of the Unfunded Mandates Reform Act of 1995,²⁰ and Executive Order 13132.²¹

2, *Executive Orders 12866 and 13563 Statement*

¹⁴ These changes are described in more detail previously in this document and in the concurrently publishing separate final rule that adds new regulations at 29 CFR 2520.103-14 and 2520.104-51, pursuant to section 110 of ERISA.

¹⁵ Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

¹⁶ Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011).

¹⁷ 5 U.S.C. 804(2) (1996).

¹⁸ 44 U.S.C. 3506(c)(2)(A) (1995).

¹⁹ 5 U.S.C. 601 et seq. (1980).

²⁰ 2 U.S.C. 1501 et seq. (1995).

²¹ Federalism, 64 FR 43255 (Aug. 10, 1999).

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing and streamlining rules, and of promoting flexibility. It also requires federal agencies to develop a plan under which the agencies will periodically review their existing significant regulations to make the agencies' regulatory programs more effective or less burdensome in achieving their regulatory objectives.

Under Executive Order 12866, "significant" regulatory actions are subject to the requirements of the executive order and review by the Office of Management and Budget (OMB). Section 3(f) of the executive order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined that this rule is economically significant within the meaning of section 3(f)(1) of the Executive order. Therefore, the DOL has provided an assessment of the potential costs, benefits, and transfers associated with these final rules. In accordance with the provisions of Executive Order 12866, this rule was reviewed by OMB. Pursuant to the Congressional Review Act, OMB has designated this rule as a "major rule," as defined by 5 U.S.C. 804(2).

3. *Affected Entities*

The SECURE Act amendments first authorized PEPs to begin operating beginning on January 1, 2021, and early adopted PEPs will have done their first filings of Form 5500 starting in July 2022. Similarly, DCG reporting arrangements are a new filing option that will start with the 2023 plan year; thus, the first such consolidated filings will not begin until July 2024. Thus, there is little historical Form 5500 information that the DOL can use to evaluate the number of affected entities. As a result, there is significant uncertainty regarding the DOL's ability to measure costs and benefits that may result from these final rules.

The DOL nonetheless presents an overview of potentially affected entities and an approach to evaluating the possible impacts of these final rules and form changes in the following sections. In evaluating costs and benefits, the DOL took account of the fact that various types of plans could be affected by more than one of the changes.

i. Defined Contribution Pension Plans

In 2020, there were 700,034 defined contribution plans with 110.4 million total participants and 85.3 million active participants. Plans with fewer than 100 total participants (small plans) account for 87.6 percent of plans.²²

ii. Defined Contribution Group (DCG) Reporting Arrangement

As this is a new type of annual reporting method, the DOL does not have data on how many DCGs would be created nor the number of plans that would choose to satisfy their individual filing obligations by meeting the requirements for being part of a DCG, including the filing of a consolidated Form 5500 Annual Return/Report by the common plan administrator. In 2020 there were 531,872 small defined contribution plans that reported the plan characteristic code 3D in their Form 5500-SF to indicate that they are intended to operate

²² Employee Benefits Security Administration, Private Pension Plan Bulletin, Abstract of 2020 Form 5500 Annual Report (2020). The 2020 Form 5500 data set is the most recent available because Form 5500 filings for the 2020 reporting year generally are not required to be filed for calendar year plans until July through October of 2021, and the deadline for fiscal year plans may extend well into 2022. The User Guide for the 2018 Form 5500 Private Pension Plan Research File includes a discussion of the creation of the annual data set and timing of data extraction.

as pre-approved plans under sections 401, 403(a), and 4975(e)(7) of the Code. The DOL assumes that a DCG reporting option may suit their existing plan and business models and that some fraction of these plans may find it advantageous to join a DCG for filing purposes.

iii. Multiple-Employer Pension Plans

A MEP, for Form 5500 reporting purposes, generally is a retirement plan maintained by two or more employers that are not members of the same controlled group or affiliated service group under Code section 414(b), (c), or (m), and which is not a multiemployer plan.²³ In 2020, there were 4,791 MEPs filing a Form 5500, of which 182 were defined benefit pension plans and 4,609 were defined contribution pension plans. There were 7.3 million participants reported as covered by these plans.²⁴

Association Retirement Plan

An association retirement plan is a defined contribution MEP, sponsored by a bona fide group or association of employers that meets the conditions under 29 CFR 2510.3-55(b). Plan year 2020 is the first year that a significant number of association retirement plans would file a Form 5500.²⁵ The 2020 and 2021 forms do not have a way to identify those plans, therefore, the DOL does not have information on how many reporting MEPs are association retirement plans. The final forms revisions provide a way to identify these plans for the 2023 Form filings.

Professional Employer Organizations (PEOs) Plan

A PEO MEP is a defined contribution pension plan sponsored by a bona fide professional employer organization (PEO) that meets the conditions under 29 CFR 2510.3–55(c). According to the National Association of Professional Employer Organizations, there are 487 PEOs in the

²³ See, e.g., 2020 Form 5500 instructions at 14.

²⁴ Employee Benefits Security Administration, Private Pension Plan Bulletin, Abstract of 2020 Form 5500 Annual Reports (September 2022).

²⁵ The DOL's final association retirement plan regulation, at 29 CFR 2510.3–55, published July 31, 2019, clarified, and expanded the types of arrangements that could be treated as MEPs under Title I of ERISA to include plans established and maintained by a bona fide group or association of employers (association retirement plans) and by a professional employer organization (PEO plans).

United States.²⁶ Plan year 2020 is the first year that a significant number of PEO MEPs would file a Form 5500. The 2020 and 2021 forms do not have a way to identify those plans, therefore, the DOL does not have information on how many reporting MEPs are PEO MEPs. The final forms revisions provide a way to identify these plans for the 2023 Form filings.

Pooled Employer Plans (PEPs)

The SECURE Act amended section 3(2) of ERISA and added section 3(43) to ERISA authorizing a new type of ERISA-covered defined contribution MEP referred to as a “pooled employer plan” to be operated by a “pooled plan provider.” In its 2020 final rule on Registration Requirements for Pooled Plan Providers, the DOL noted the uncertainty surrounding the number of PEPs that could be created based on the final rule, the number of employers that would participate in such plans, and the number of participants and beneficiaries that would be covered by them.²⁷ By the end of year 2021, 71 entities filed the Form PR to register as pooled plan providers with approximately 3 PEPs per provider. These are the providers assumed most likely to provide these services for the year 2021.²⁸

Due to the timing of Form 5500 filing deadlines, complete data from the plan year 2021 filings, which contain information on how many employers are participating in PEPs and the number of participants covered by these, are not available. Therefore, the DOL must rely on other sources and professional judgement to estimate their numbers.²⁹ The DOL attempted to review available public information on PEPs by looking at information included in the filed Forms PR, and by examining news articles and statements on the pooled plan provider’s

²⁶ National Association of Professional Employee Organizations, Industry Statistics: (Accessed 10/3/2022), <https://www.napeo.org/what-is-a-peo/aboutthe-peo-industry/industry-statistics>. NAPEO had previously reported 904 PEOs but revised its methodology. An explanation of the revision is included on the NAPEO website. See The PEO Industry Footprint 2021, Laurie Bassi and Dan McMurrer, McBassi & Company at page 4 (May 2021) (available at www.napeo.org/docs/defaultsource/white-papers/2021-white-paperfinal.pdf?sfvrsn=6dde35d4_2

²⁷ 85 FR 72934, 72949 (Nov. 16, 2016).

²⁸ Department of Labor, Form PR at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-pr>.

²⁹ Form 5500 Annual Return/Report is due the last day of the seventh month after the plan year ends, which for calendar year plans (plans that begin on January 1st of the year) is July 31st. There is also an available 3-month filing extension that most plans utilize. This extension pushes the filing deadline to the end of October for calendar year plans.

websites. That review indicated that there are a variety of approaches in how PEPs are offered, and a variation in the number of employers that have joined a PEP. While pooled plan providers are required to update the Form PR to advise the DOL and the IRS about the establishment and offering of new PEPs, the Form PR does not collect information on the number of employers participating in their PEPs or the number of employees covered by each plan. One pooled plan provider was reported in another source as having 2,000 employers that joined their PEP, whereas other providers reported five to 10 employers had joined their PEPs.

iv. Pre-Approved Pension Plans

These are plans that reported plan characteristics code 3D when filing the Form 5500 Annual Return/Report. The code 3D indicates “A pre-approved plan under sections 401, 403(a), and 4975(e)(7) of the Code that is subject to a favorable opinion letter from the IRS.” A pre-approved retirement plan is a plan offered to employers by financial institutions and others that are authorized to sponsor pre-approved plans. The pre-approved plan provider then makes the IRS-approved plan available to adopting employers. Providers must make reasonable and diligent efforts to ensure that adopting employers of the plan have actually received, and are aware of, all plan amendments and that such employers complete and sign new plan documents when necessary.³⁰ Of the 646,111 defined contribution pension plans that reported code 3D, 574,231 are reported as small plans, defined as having fewer than 100 participants each. Of these small defined contribution plans, 531,872 file the Form 5500-SF, cover approximately 11.1 million participants, and hold approximately \$0.8 trillion in assets.

The DOL expects that Form 5500-SF small pension plan filers are the most likely candidates to join a DCG or a PEP; however, the DOL lacks information on the number of plans that would join a DCG or a PEP.

³⁰ IRS website at <https://www.irs.gov/retirement-plans/preapproved-retirement-plans> (last updated March 17, 2022).

v. *Plans Affected by Change in Participant Count Methodology for Determining Eligibility for Small Plan Simplified Reporting Option for defined contribution pension plans*

A change in the participant count methodology for defined contribution pension plans to determine whether the plan is a “large plan” (generally, a plan that covers 100 or more participants) for purposes of Form 5500 annual reporting requirements, including the requirement to include an IQPA report and other schedules generally applicable to large pension plans, is adopted in the final rules. Currently, the plan size measure for this annual reporting purpose is based on the total number of participants at the beginning of the plan year and expressly includes employees eligible to participate in a Code section 401(k) plan (“401(k) plan”) even if the employee has not elected to participate and does not have an account balance. The final rules change this methodology and instead counts only the number of participants at the beginning of the plan year with an account balance.

Current Form 5500 filings collect the number of participants at the end of the plan year with an account balance and does not collect such a figure for the beginning of the plan year. Accordingly, the DOL used the end of plan year number of participants with account balance to estimate the number of plans impacted by this change. Using the current definitions of large and small plans, there are 86,744 large defined contribution plans and 613,290 small defined contribution plans. Using the number of participants at the end of the year with an account balance as a proxy for the new participant count methodology yields estimated 68,057 large and 631,976 small defined contribution plans. This results in an estimated 18,699 defined contribution plans experiencing a cost savings by filing as small plans, which allow the possibility of exemption from the IQPA audit and report requirements and from including required financial statements and Schedules of Assets as part of their annual report.

vi. *Defined Benefit Pension Plans*

In 2020, there were 46,577 defined benefit plans with 31.9 million total participants and 12 million active participants. There were 45,032 single-employer defined benefit plans and 1,363 multiemployer defined benefit plans.³¹

3. Benefits

i. *Benefits of Establishing PEPs.*

The SECURE Act established a new type of ERISA-covered defined contribution pension plan, the PEP, which is established and maintained by a pooled plan provider that meets the conditions of the statute. By creating the PEP structure, the SECURE Act permitted multiple unrelated employers to participate without the need for any common interest among the employers (other than having adopted the plan). As discussed below, PEPs need to provide ERISA section 103(g) participating employer information, including certain basic information regarding the pooled plan provider. Potential increased reporting costs for those employers choosing to offer retirement benefits to their employees through participating in a PEP would be offset by other cost reductions or business benefits relative to not having to administer an individual plan as further discussed below.

By participating in a PEP, employers could minimize their fiduciary responsibilities for ongoing administration and operation of the plan. Employers could benefit from reduced risk and liability because the pooled plan provider would bear most of the administrative and fiduciary responsibility for operating the PEP, including hiring and monitoring the ERISA section 3(38) investment managers. Similarly, operating efficiency for participating employers are expected because the pooled plan provider handles the administrative tasks such as participant communications, plan recordkeeping, submitting the Form 5500, and complying with plan audits.

³¹ Employee Benefits Security Administration, Private Pension Plan Bulletin, Abstract of 2020 Form 5500 Annual Reports (September 2022).

Also, as they are expected to be professional plan providers, it is anticipated that a pooled plan provider, relative to a small employer, would be better equipped to ensure that more accurate and complete data is reported to the Agencies on the Form 5500. Further, as discussed in the regulatory impact analysis to the regulation establishing the Form PR, PEPs should benefit from scale advantages, including the ability to obtain lower fees for investment options.³² The marginal costs for PEPs would shrink and fixed costs would be shared amongst the PEPs through pooled plan providers resulting in direct economic efficiencies.

This concept is supported by research conducted by Szapiro, that found the per employer cost of a large MEP can be lower than the cost of a small single-employer plan.³³ Specifically, the study finds that a MEP with \$125 million and 80 participating companies cost 78 basis points, whereas a single-employer plan with \$1.5 million cost 111 basis points. Thus, compared to single-employer plans, MEPS can be a more cost-efficient option for small employers.

Another potential outcome is that, due to increases in economic efficiency, small businesses may be better able to compete with larger companies in recruiting and retaining workers due to a competitive employee benefit package.

Finally, PEPs may enable participants to achieve better retirement outcomes. VanDerhei's research finds that the adoption of a MEP in which the members do not need to share a common interest, other than participating in the same plan, with a 25 percent opt-out rate among employees, results in an overall 1.4 percent reduction in the retirement savings deficit, compared to when a MEP is not adopted.³⁴ The study also finds a 3.1 percent reduction in the retirement savings deficit for individuals working for employers with fewer than 100 employees

³² 85 FR at 72949–72950.

³³ Szapiro, Aron, “Pooled Employer Plans: Paperwork or Panacea.” Accessible at https://team.rebelfinancial.com/wp-content/uploads/2020/09/As_PEPs_Come_of_Age_What_Can_Their_Forebearers_Tell_us_About_how_They_Will_Work.pdf

³⁴ VanDerhei, Jack, “How Much More Secure Does the SECURE Act Make American Workers: Evidence from EBRI's Retirement Security Projection Mode.” *EBRI Issue Brief* No 501 (2020). VanDerhei refers to MEPs in which the members do not need to share a common interest as “Open MEPs.” (Available at https://www.ebri.org/docs/default-source/ebri-issue-brief/ebri_ib_501_secure-20feb20.pdf?sfvrsn=db6f3d2f_4 (Accessed July 21, 2021.)).

and 3.3 percent reduction in the retirement savings deficit for individuals working for employers with 100 to 500 employees.

ii. Benefits of Establishing the Schedule MEP

A benefit the new Schedule MEP provides is a unified vehicle to report information related to SECURE Act provisions, including information unique to MEPs. The participating employer information collected pursuant to section 103(g) of ERISA becomes data capturable, and available at a publicly viewable website containing images of the Form 5500 and related data sets. This public data will help protect plan participants and beneficiaries by allowing for improved analysis for oversight and research purposes by the government, the regulated community, and other interested stakeholders.

iii. Benefits of DCGs

The updated Form 5500 annual reporting requirements that allow for consolidated reporting, pursuant to section 202 of the SECURE Act, provides eligible defined contribution pension plans with an alternative method of compliance with annual reporting requirements that would otherwise mandate a separate annual report for each plan.

The consolidated reporting option for defined contribution pension plans also allows for more choice and flexibility in the reporting of information to the government. Eligible plans can choose, based on benefits and preferences, if they want to continue with the plan filing as an individual plan or as part of a DCG. Plans whose individual reporting obligations would be satisfied by a DCG annual return/report filing may see a reduction in reporting costs depending on their circumstances.

The Schedule DCG provides individual plan-level information for those defined contribution pension plans whose annual reporting requirements would be satisfied by a DCG's consolidated filing. The uniformity of the DCG arrangement structure and the benefits of consolidated reporting may reduce the complexity and administrative burden of plans. Also, by having a common plan administrator that is expected to be a professional service provider

filing on behalf of a group, the DOL expects an increase in the likelihood that more accurate and complete data is reported to the Agencies. As a result, there may be an increase in annual reporting compliance and compliance with applicable ERISA requirements in general.

Additionally, the Schedule DCG will help compare individual plan participation and aggregate asset and liability information from year to year. The Schedule DCG includes many of the questions that are currently required on the Form 5500-SF, and for large plans and small plans that do not meet the audit waiver conditions, questions regarding the required individual IQPA report and financial statements that must be filed with the Schedule DCG for each individual plan. While this requirement reduces the cost saving of filing as a DCG, the Departments believe the information requested is consistent with the SECURE Act provision permitting the Departments to collect whatever plan level information is needed to perform adequate oversight and vital to provide to participants, beneficiaries, and the Departments information needed to adequately monitor the plans and keep track of their assets from year to year.

iv. Benefits of Changes to Participant Count Methodology for Determining Eligibility for Small Plan Simplified Reporting Option for Defined Contribution Pension Plans

The rule redefines the method of counting covered participants for purposes of determining when a defined contribution plan may file as a small plan and whether the plan may be exempt from the IQPA audit requirements generally applicable to large defined contribution pension plans.

Defined contribution pension plans, including 401(k) plans and 403(b) plans, under these final rules, will determine whether they must file as a large plan based on the number of participants with account balances as of the beginning of the plan year. This revises the previous measurement method, which included the total number of eligible participants at the beginning of the plan year, regardless of individual account activity. Since the size of the plan is a major factor in determining whether a plan must attach an IQPA report, this change is expected to

reduce administration costs for the plans that are now able to exempt itself from the IQPA audit and report requirements.

Further, some stakeholders have suggested that section 112 of the SECURE Act could make it even more likely that a plan with a small number of active participants might be required to bear the cost of an audit based on eligible, but not participating employees being counted toward the audit threshold. Specifically, section 112 provides that, beginning January 1, 2024, long-term, part time workers that have reached the plan's minimum age requirement and have worked at least 500 hours in each of three consecutive 12-months period must be permitted to make elective contributions to a section 401(k) qualified cash or deferred arrangement.³⁵ This could add to the participant count the number of employees who are eligible to, but who elect not to participate in a plan, which could impact whether a plan needs to file as a large plan. The change in counting methodology will result in excluding from the participant count those long-term, part time workers who are eligible to participate in a plan, but have not in fact elected to, make contributions to the plan.

The DOL expects that excluding from the participant count participants who are eligible to participate but do not have an account balance at the beginning of the plan year will reduce expenses of establishing and maintaining a retirement plan, and consequently encourage more employers to offer workplace-based retirement savings plans to their employees.

v. Benefits of Schedule H Breakout Categories for Administrative Expenses

The final forms revisions update Schedule H to add new breakout categories to the "Administrative Expenses" category of the Income and Expenses section of the Schedule H balance sheet. The data element breakouts for Administrative Expenses will now be "Salaries and allowances," "Contract administrator fees," "Other recordkeeping fees," "Independent

³⁵ Under section 125 of SECURE Act 2.0, this three year measurement period is reduced to two years with the effect that long-term, part-time workers must be treated as meeting the time in service requirements to participate in Code section 401(k) qualified cash or deferred arrangements and, as added by section 125 of the SECURE Act 2.0, Code section 403(b) plans once they have worked two consecutive years (with at least 500 hours of service per year), effective for plan years starting on or after January 1, 2025.

Qualified Public Accountant (IQPA) fees,” “Investment advisory and investment management fees,” “Bank or trust company trustee/custodial fees,” “Actuarial fees,” “Legal fees,” “Valuation/appraisal fees,” “Other Trustee fees/expenses,” and “Other expenses.” The changes to how plan expenses are reported brings greater transparency to plan transactions, makes decisions on plan costs more observable to plan participants, and enhances the efficiency of the Agencies’ enforcement efforts. ERISA Section 513(a) authorizes and directs the Secretary of Labor and EBSA to conduct a research program on employee benefits. The Form 5500 Annual Return/Report is a leading source of data used in this research program. Breaking out the administrative expenses also aids in conducting research as the individual plan expenses are observable.

vi. *Benefits of Adding Internal Revenue Code-Based Questions for the 2023 Form 5500s*

Several questions are being added to the 2023 Form 5500s to help identify plans that are more likely to experience compliance issues, and help the IRS more effectively conduct investigations. The rule adds a nondiscrimination and coverage test question to Form 5500 and Form 5500-SF that was on the Schedule T before it was eliminated. The question asks if the employer aggregated plans in testing whether the plan satisfied the nondiscrimination and coverage tests of Code sections 401(a)(4) and 410(b).

Adding this question allows the IRS to identify these plans for examination. This question is also helpful when performing pre-audit analysis and allows the IRS to narrow any inquiries for information that is requested from the plan sponsor. The restoration of this question also reflects the elimination of optional coverage and nondiscrimination demonstrations in the IRS determination letter process. See Rev. Proc. 2012–6, 2012–1 I.R.B. 235 and Announcement 2011–82, 2011–52 I.R.B. 1052.

The final forms revisions add a question to Form 5500 and Form 5500-SF, for 401(k) plans asking whether the plan sponsor used the design-based safe harbor rules or the “prior year” ADP, or “current year” ADP test, or if it is not applicable. A plan that performs “prior

year” or “current year” ADP testing is more likely to have compliance issues than a plan with a “designed-based safe harbor.” Adding this question allows the IRS to identify 401(k) plans that use ADP testing for examination over plans that have designed-based safe harbors. This question will also help the IRS perform pre-audit analysis, and for design-based safe harbor plans allow the IRS to verify whether allocations of required safe harbor contributions comply with the terms of the plan; and whether proper notice requirement is satisfied on an annual basis.

The final forms revisions add a question to Form 5500 and the Form 5500-SF asking whether the employer is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, the date of the favorable Opinion Letter, and the Opinion Letter serial number.³⁶

This question is meant to help the IRS identify whether a plan sponsor has adopted a pre-approved plan, and to determine whether the plan was adopted timely in accordance with the Code section 401(b) remedial amendment period. This question will also assist IRS in determining whether to select a plan for examination as a late amender for changes in the law.

vii. Benefits of Defined Benefit Plan/Title IV Questions for the 2023 Form 5500s

Changes to the Form 5500 Schedules SB and R are intended to clarify instructions, simplify reporting methods, and enhance the usability of data collected regarding asset allocation.

4. Cost Estimates and Savings

This rule makes important changes to the requirements currently in effect. Some of these changes affect the distribution between the small and large size classes for plans filing the annual report to change. The DOL estimates that a total of 23,533 small plans and 842 large plans would opt to join either a DCG or a PEP, and therefore have their filing requirement fulfilled by these entities. The DOL also estimates that 18,699 large plans would be redefined and file as small plans due to the change in the participant count methodology for determining when a defined contribution plan may file as a small plan.

³⁶ IRS is making a parallel update to the Form 5500-EZ, which is solely in the jurisdiction of the IRS.

The DOL anticipates that the costs for plans to satisfy their annual reporting obligations will typically decrease under these regulations relative to the current regime.³⁷ As shown in Table 1 below, the aggregate annual cost of such reporting under the current regulations and forms is estimated to be \$505.5 million annually, shared across the approximately 864,100 filers subject to the filing requirement. The DOL estimates that the regulations and forms revisions in this rule impose an annual burden of \$474.1 million on approximately 839,400 filers, for a total decrease of \$94.7 million. Most of this decrease (\$63.3 million) is from audit cost savings and the remainder (\$31.4 million) results from other reporting efficiencies.

Table 1. The Final Rule Reduces Overall Filing Cost by Roughly \$95 Million

Estimated Burden Change by Type of Filer, All Changes					
Type of Plan	Number of Filers Under Current (Thousands)	Number of Filers Under Final (Thousands)	Aggregate Cost Under Current (Millions)	Aggregate Cost Under Final (Millions)	Aggregate Cost Change (Millions)
Large Plans	148.8	129.4	\$261.2	\$227.6	-\$33.6
Small Plans	705.6	700.1	\$232.9	\$231.3	-\$1.5
DFEs	9.7	9.9	\$11.4	\$15.2	\$3.8
Form Changes	864.1	839.4	\$505.5	\$474.1	-\$31.4
Audit Cost Changes					-\$63.3
Total Changes					-\$94.7
Notes: Some displayed numbers do not sum up to the totals due to rounding. DOL calculations are based on the 2020 Private Pension Plan Bulletin data files. Large plans - 100 participants or more Small plans - generally fewer than 100 participants					

To estimate the net change in cost burden, because of the interaction of the changes, the DOL has also analyzed the cost impact of the individual revisions on classes of filers. In doing so, the DOL took account of the fact that various types of plans would be affected by more than one revision and that the sequence of multiple revisions would create an interaction in the

³⁷ The DOL believes that the annual cost burden on filers would be higher still in the absence of the regulations enabling use of the Form 5500 Annual Return/Report in lieu of the statutory requirements. Without the Form 5500 Annual Return/Report, filers would not have the benefits of any regulatory exceptions, simplified reporting, or alternative methods of compliance, and standardized and electronic filing methods.

cumulative burden on those plans. The total changes in Table 1 show the estimated accumulated changes. The other tables below show estimates for individual changes from the same baseline prior to the enactment of any of these rules or revisions; therefore, the tables cannot be added to arrive at the estimates in Table 1.

i. *Schedule MEP and PEPs*

The new Schedule MEP will be filed by all MEPs, including PEPs, and includes participating employer information already filed as an attachment, as well as limited specific reporting requirements for PEPs. This change also results in the information on participating employers being machine-readable.

As discussed in the affected entities section, estimates are available for MEPs that have filed a Form 5500 previously, but not for the newly created PEPs that have yet to file a Form 5500. The impacts of the recent DOL rulemaking concerning association retirement plans and PEO MEPs also carries some uncertainty regarding the number of MEPs that may be affected. By the end of year 2021, 71 entities filed the Form PR to register as pooled plan providers with approximately 3 PEPs per provider. These are the providers assumed most likely to provide these services for the year 2021. Therefore, for purposes of this analysis, the DOL assumes there to be a total of 202 PEPs. As it is the case with MEPs, joining a PEP translates into less plan maintenance expenditures due to economies of scale. Additionally, the DOL believes the information requested on the Schedule MEP is already available to plans, so the burden is primarily entering the information onto the form. The burden to file the Schedule MEP is estimated to average 10 minutes for MEPs and 14 minutes for PEPs, with variation depending on the number of participating employers.

Although the DOL does not know how many plans would decide to offer benefits through a PEP, the current average number of participating employers in a MEP is a reasonable proxy for PEPs that may be established in the future. DOL data suggests that MEPs, on average, have 11 participating employers, nine employers with fewer than 100 participants

(small) and two employers with 100 or more participants (large). The DOL uses this information in its estimates for PEPs. Combined with one pooled plan provider registrant that has already listed 2,000 participating employers, it is estimated that a total of 3,369 small participating plans and 842 large participating plans would provide benefits through PEPs.³⁸ The DOL assumes this would result in a direct decrease of 3,369 defined contribution Form 5500-SF filers and a decrease of 563 Form 5500 defined contribution filers. As Table 2 shows this results in an expected reporting cost reduction of \$2 million (not including the audit cost reduction in Table 1) and a total reduction of individual filers from 864,100 to 860,100 filers. The reduction in filers due to single filers joining a PEP would be partially offset by an increase in filings by the PEP themselves. This total reduction considers both changes to the number of filings. There is, however, considerable uncertainty in this estimate of a net impact on filings because of the uncertainty regarding the number of PEPs and the resulting increase in PEP filings.

Table 2 – PEPs and Schedule MEP Generate Approximately \$2 Million in Savings

Estimated Burden Change by Type of Filer. Introduction of PEPs and Schedule MEP filing.					
Type of Plan	Number of Filers Under Current (Thousands)	Number of Filers Under Final (Thousands)	Aggregate Cost Under Current (Millions)	Aggregate Cost Under Final (Millions)	Aggregate Cost Change (Millions)
Large Plans	148.8	148.1	\$261.2	\$260.1	-\$1.1
Small Plans	705.6	702.2	\$232.9	\$231.9	-\$0.9
DFEs	9.7	9.7	\$11.4	\$11.4	\$0.0
Overall Total	864.1	860.1	\$505.5	\$503.5	-\$2.0
Notes: Some displayed numbers do not sum up to the totals due to rounding. DOL calculations are based on the 2020 Private Pension Plan Bulletin data files. Large plans - 100 participants or more Small plans - generally fewer than 100 participants					

³⁸ For the calculation of the total number of participating employers in PEPs, it is first assumed that 80 percent of all the employers who would participate in a PEP are currently providing benefits through small plans, and that the remaining 20 percent through large plans. This distribution would apply to the registrant that has already exceptionally listed 2,000 employers (which would then be divided in 1,600 small participating plans and 400 large participating plans) and to the other 201 pooled plan providers assumed to be created. It is also assumed that each of these other 201 pooled plan providers would be servicing 11 employers each. Therefore, the total number of small plans participating in a PEP is estimated as: $1,600 + (201 \times 11 \times 0.8) = 3,369$ (rounded). Similarly, the total number of large participating plans is estimated as: $400 + (201 \times 11 \times 0.2) = 842$ (rounded).

ii. DCG Filings

As discussed above, a DCG filing for a group of plans likely reduces reporting burden as only one Form 5500 is filed and signed by a common plan administrator, eliminating the need for separate administrators from participating plans. However, the burden from the consolidated Form 5500 filed by the DCG, including the Schedule DCG to report individual plan information for each participating plans may offset some or all of these savings. In 2020, there were 531,872 small defined contribution plans that file the Form 5500-SF and reported the plan characteristic code 3D; this type of plan may find it advantageous to adopt this new structure of providing benefits and therefore a fraction of them will join a DCG.³⁹ The DOL sought comments on these assumptions but did not receive any that warranted adjustments to these estimates.⁴⁰

The change in burden from allowing a DCG to file on behalf of plans is estimated in the following manner. Apart from the 531,872 small defined contribution plans mentioned above, there are 1,813 pre-approved plans.⁴¹ The DOL does not know if every pre-approved plan will file on behalf of these 531,872 plans. These pre-approved filers are the likeliest entities to file as a DCG. Although the DOL lacks sufficient information to confidently estimate how many DCGs will form, the 71 entities that have filed the Form PR to register as a pooled plan provider, and that would provide these services for the year 2021, may be suggestive of the number of entities currently seeking to take advantage of new structures to reduce plan administrative costs. Potential DCGs may be better positioned than pooled plan providers to commence operations as they already have client plans that could benefit from the savings and do not have to switch plans. Therefore, the DOL assumes that twice the number of DCGs (142) would form in the first year as the number of pooled plan providers (71).

³⁹ As noted above, code 3D indicates “A pre-approved plan under sections 401, 403(a), and 4975(e)(7) of the Code that is subject to a favorable opinion letter from the IRS.”

⁴⁰ The DOL acknowledges that there could be other employers whose plans are outside the category of small defined contribution type, which currently file the Form 5500-SF and report plan characteristic 3D, that might also find an advantage in joining a DCG and therefore start providing benefits this way.

⁴¹ <https://www.irs.gov/retirement-plans/preapproved-retirement-plans>

With the availability of DCGs as an option, some service providers may discontinue their provision of individual Form 5500 filing services, and only offer to file as DCGs. Some plans that contract with service providers that do so may choose to be moved into DCG filings, while others may change service providers because they don't want to comply with the additional filing obligations placed on DCG filers. For purposes of this analysis, we assume that half of the plans currently associated with a pre-approved plan provider that decide to file as a DCG are offered and accept the DCG requirements to stay with the same provider. The DOL uses these assumptions to estimate that 142 DCGs with a total of 20,827 small plans will have their annual return/report filing obligation satisfied by the filing of a DCG Form 5500.⁴²

As described above, the consolidated return/report to be filed by the DCG to satisfy the annual reporting requirements of participating plans is required to include a Schedule DCG for each participating plan. The cost calculation must consider this cost on a per participating plan basis. The DOL believes that once individual plans join a DCG, the average cost of filing a Schedule DCG, which would be done for each of the estimated 20,164 participating plans, would be lower than the cost of filing a Form 5500-SF separately, which was the cost incurred by a small plan before joining a DCG. Although the DOL does not know how much lower this new cost would be, it estimates that completing a Schedule DCG as part of the DCG's Form 5500 annual return/report would take about 40 percent less time than completing a Form 5500-SF for each individual plan.

As Table 3 shows, assuming the number of DCGs and plans per DCG as described above, along with the estimated cost of filing a schedule DCG, the DOL expects an overall cost reduction of \$2.1 million. This cost reduction assumes, as a baseline, the current definition of large and small plans, and would be the result of a decrease in the number of Form 5500-SF filers, from 864,100 to 843,400. The reduction in Form 5500-SF filers would be partially offset

⁴² Average number of ERISA plans per pre-approved plan = $531,872 / 1,813 = 293.4$. Estimate of total number of ERISA plans filing as part of a DCG = $(2 \times 71 = 142) \times 293.4 \times 0.5 \approx 20,827$.

by an increase in DFE filings, which reflects the introduction of DCGs as filing entities. This total reduction considers both changes in the number of filings.

Table 3 – DCG Implementation Saves Approximately \$2 Million

Estimated Burden Change by Type of Filer. Introduction of DCGs and Schedule DCG filing.					
Type of Plan	Number of Filers Under Current (Thousands)	Number of Filers Under Final (Thousands)	Aggregate Cost Under Current (Millions)	Aggregate Cost Under Final (Millions)	Aggregate Cost Change (Millions)
Large Plans	148.8	148.8	\$261.2	\$261.2	\$0.0
Small Plans	705.6	684.8	\$232.9	\$227.1	-\$5.8
DFEs	9.7	9.9	\$11.4	\$15.2	\$3.8
Overall Total	864.1	843.4	\$505.5	\$503.4	-\$2.1
Notes: Some displayed numbers do not sum up to the totals due to rounding. DOL calculations are based on the 2020 Private Pension Plan Bulletin data files. Large plans - 100 participants or more Small plans - generally fewer than 100 participants					

iii. Revised Expense Reporting on the Schedule H

These final rules revise the Schedule H to collect more detailed information on plan expenses to allow for more transparency, accountability, and increase the usefulness of the data in regulating employee benefit plans. The revision does not request any additional information, instead recategorizing the information that is already reported on Schedule C and Schedule H; therefore, the DOL believes the cost of this change to be de minimis.

iv. Changes to Participant Count Methodology for Determining Eligibility for Small Plan Simplified Reporting Option for defined contribution pension plans

The regulation changes the method of counting participants for purposes of determining when a defined contribution plan may file as a small plan, which also factors into whether the plan may be exempt from the IQPA audit requirement. Specifically, plans are directed to count only the number of participants/beneficiaries with account balances as of the beginning of the plan year, as compared to the current rule that counts all the employees eligible to participate in the plan. This is facilitated through the Form 5500 and Form 5500-SF which asks for the

number of participants with account balances at the beginning of the plan year, for defined contribution pension plans only.

This change reduces costs for plans. The additional question imposes little burden as the number of participants with account balances at the end of year is already tracked and reported; but to the defined contribution pension plans which now qualify as a small plan, the savings could be significant. EBSA estimates that the reporting burden of all required schedules for a small pension plan is, on average, approximately \$330 while the same estimate for a large pension plan is around \$1,756.

These plans and their participants may no longer have the protections provided by the audit, which could result in an increased risk of errors and fraud; however, there are conditions for small plans to be eligible for the audit waiver that are designed to address those potential risks.

For small pension plans to be eligible for the audit waiver they must meet conditions related to investment assets, financial institutions holding plan assets, disclosures to participants and beneficiaries, and enhanced fidelity bonding for persons who handle certain assets. Consistent with the DOL's goal of encouraging pension plan establishment and maintenance, particularly in the small business community, the DOL concluded that engaging an accountant should not be the only means by which the security of small plan assets can be adequately protected. Rather, in developing these final rules, consistent with the existing regulatory conditions for the small plan audit waiver, the DOL attempted to balance the interest in providing secure retirement savings for participants and beneficiaries with the interest in minimizing costs and burdens on small pension plans and the sponsors of those plans.

The DOL estimates that there could be a reduction of 19,541 large plans filing under the final rules and form changes, 842 large participating plans that could provide benefits through PEPs, and 18,699 defined contribution plans due to the changing definition of who can file as a small plan. Further, an estimated 10,714 of these plans currently provide the IQPA report and

audited financial statements and would therefore save in audit costs.⁴³ The DOL estimates that there could be an audit cost reduction of \$7,500 for each one of these 10,714 plans. Plans may still conduct an audit, even if there is no requirement. It is estimated that 25 percent of plans may still conduct an audit.⁴⁴ Data on the cost of an audit for these plans is not known and will vary based on plan size and complexity. An estimate of \$7,500 is used to approximate the cost savings.⁴⁵ This results in an estimated cost savings of \$60.3 million annually for the 8,036 plans ($10,714 * 0.75$) that will no longer be required to, and choose not to, conduct an audit. The DOL received a single comment on this estimate which suggested a range of \$8,000 to \$15,000 for a single-employer plan IQPA. Given the wide range of costs noted, both within the comment received and the referenced materials the DOL based its initial estimate on, the cost savings could be substantially higher than what the DOL uses as an estimate. These cost savings are reported in Table 1 above.

As discussed above, there are an estimated 18,699 defined contribution plans that would now be able to file as a small plan. Other reporting cost savings for these plans are based on their filing the Form 5500-SF instead of the Form 5500 and the correspondent schedules. As shown in Table 4, the DOL estimates that this redefinition of small and large plan alone would translate into a decrease of filing costs of \$27.3 million, with a reduction from 148,800 to 130,100 in large plan filers.

⁴³ To estimate the number of large plans currently providing the IQPA report and audited financial statements the DOL identified those large plans that would have been most likely to be redefined as small plans and to have filed the Schedule H in 2020, as estimated on the 2020 Form 5500 Pension Research Files. Note that the 80 to 120 participant transition provision at 29 CFR 2520.103-1(d) allows a plan that covers fewer than 100 participants to continue taking advantage of the simplified option or exemption, as applicable, until they reach 121 participants, therefore not all plans with 100 or more participants will file a Form 5500 as a large plan with a Schedule H in a given year.

⁴⁴ See <https://mathematica.org/publications/estimates-of-the-burden-for-filing-form-5500-the-change-in-burden-from-the-1997-to-the-1999-forms>

⁴⁵ A report by Mathematica suggests audit costs of between \$3,000 and \$30,000. Adjusted for inflation this would be about \$5,000 to \$50,000 in 2021 dollars. <https://mathematica.org/publications/estimates-of-the-burden-for-filing-form-5500-the-change-in-burden-from-the-1997-to-the-1999-forms>. See also www.paychex.com/retirement-services/pooled-employer-plans (accessed July 21, 2021) which suggest \$10,000 to \$20,000. Additionally, conversations with stake holders suggest a range similar to the \$10,000 to \$20,000. As the affected plans are expected to be small, the low estimates are averaged (\$5,000 and \$10,000) to arrive at \$7,500.

Table 4 – Plans Switching Filing Size Class Generates an Estimated \$27 Million in Cost Savings

Estimated Burden Change by Type of Filer. Changes to Filing Exemptions and Requirements for Small Plans					
Type of Plan	Number of Filers Under Current (Thousands)	Number of Filers Under Final (Thousands)	Aggregate Cost Under Current (Millions)	Aggregate Cost Under Final (Millions)	Aggregate Cost Change (Millions)
Large Plans	148.8	130.1	\$261.2	\$228.7	-\$32.5
Small Plans	705.6	724.3	\$232.9	\$238.1	\$5.2
DFEs	9.7	9.7	\$11.4	\$11.4	\$0.0
Overall Total	864.1	864.1	\$505.5	\$478.2	-\$27.3
Notes: Some displayed numbers do not sum up to the totals due to rounding. DOL calculations are based on the 2020 Private Pension Plan Bulletin data files. Large plans - 100 participants or more Small plans - generally fewer than 100 participants					

v. *Internal Revenue Code and ERISA Title IV Changes*

The regulation includes changes related to Internal Revenue Code requirements and reporting requirements for defined benefit pensions subject to filing Schedules MB, SB, and R. The Agencies believe the additional questions reflect information plans have close at hand and expect that reporting this information would result in a de minimis marginal burden.

5. Assumptions, Methodology, and Uncertainty

The cost and burden associated with the annual reporting requirements for any given plan depend upon the specific information that must be provided, given the plan’s characteristics, practices, operations, and other factors. For example, a small, single-employer defined contribution pension plan eligible to file the Form 5500-SF should incur far lower costs than a large, multiemployer defined benefit pension plan that holds multiple insurance contracts, engages in reportable transactions, and has many service providers that each received over \$5,000 in compensation. The DOL separately considered the cost to different types of plans in arriving at its aggregate cost estimates. The DOL’s basis for these estimates follows.

i. *Assumptions Underlying this Analysis*

The DOL's analysis assumes that all benefits and costs would be realized in the first year of the reporting cycle to which the changes apply and within each year thereafter. This assumption is premised on the requirement that each plan will be required to file the Form 5500 Annual Return/Report. The DOL has used a "status quo" baseline for this analysis, which assumes the future will resemble the present, absent the final regulations and forms revisions. The DOL does not include a separate one-time transition cost for learning or updating systems during the first year in which the reporting changes apply. Cost to read instructions is already included in the estimates of the burden. The changes would largely apply requirements currently in effect for large MEPs to PEPs and DCGs. The financial services providers and recordkeepers that service such plans and DCGs generally are already providing Form 5500 filings services for the employee benefit plans they service so we do not anticipate material start-up costs for them to file Form 5500s on behalf of PEPs or DCGs. We also do not anticipate that individual plans that participate in a DCG reporting arrangement would expend more time to supply information to DCG reporting arrangements during the first year than what they currently incur to supply annual reporting data to service providers that prepare their annual reports (and may in fact incur less time even during the first year). Similarly, the creation of the Schedule MEP mostly reorganizes the way annual reporting data is provided by affected plans, rather than adding significant additional information collection.

Further, it is not anticipated that the limited number of additional questions for (1) defined benefit pension plans, and (2) Code related questions for pension plans related to existing compliance obligations, will entail material start-up or learning costs. The changes largely apply existing requirements in the context of a new schedule for some filers and as an attachment to current filings for others.

ii. Methodology

Mathematica Policy Research, Inc. (MPR) developed the underlying cost data, which has been used by the Agencies in estimating burden related to the Form 5500 Annual Return/Report

since 1999. See 65 FR 21068, 21077–78 (Apr. 19, 2000); Borden, William S., *Estimates of the Burden for Filing Form 5500: The Change in Burden from the 1997 to the 1999 Forms*, Mathematica Policy Research, submitted to DOL May 25, 1999.⁴⁶ The cost information was derived from surveys of filers and their service providers, as modified due to comments, which were used to measure the unit cost burden of providing various types of information. The DOL has adjusted these unit costs since 1999 to account for changes to the forms and schedules and increases in the cost of labor and service providers since MPR developed the initial data.

For this form revision, the DOL used the adjusted MPR unit cost data for pension and non-health welfare plans. The DOL developed the unit cost data for group health plans using the best available data. To develop unit costs for DFEs, the DOL created weighted averages of the unit costs for plans.

The DOL used historical counts of Form 5500 Annual Return/Report filers tabulated by type and reported characteristics to estimate filer counts for pension plans, welfare plans, and DFEs.

The DOL modeled its approach to calculating burden on the approach used during the 2009 forms revision and the 2016 modernization proposal.⁴⁷ Aggregate burden estimates were produced in both revisions by multiplying the unit cost measures by the filer count estimates. The methodology is described in broad terms below.

To estimate aggregate burdens, types of plans with similar reporting requirements were grouped together in various groups and subgroups. Calculations of aggregate cost were prepared for each of the various subgroups, both under requirements in effect prior to this action and under the forms as revised. The universe of filers was divided into four basic types: Defined

⁴⁶ The MPR report can be accessed at <https://mathematica.org/publications/estimates-of-the-burden-for-filing-form-5500-the-change-in-burden-from-the-1997-to-the-1999-forms>. See also Technical Appendix: Documentation of Form 5500 Revision Burden Model at www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices.

⁴⁷ See 72 FR 64731 (Nov. 16, 2007) and 81 FR 47496 (July 16, 2016).

benefit pension plans, defined contribution pension plans, welfare plans, and DFEs. Each of these major plan types was further subdivided into multiemployer and single-employer plans.⁴⁸

Since the filing requirements differ substantially for small and large plans, the plan types were also divided by plan size. For large plans (100 or more participants), the defined benefit plans were further divided between very large (1,000 or more participants) and other large plans (at least 100 participants, but fewer than 1,000 participants). Small plans (less than 100 participants) were divided similarly, except that they were divided into Form 5500-SF eligible and Form 5500-SF ineligible plans, as applicable.

Welfare plans were divided into group health plans and plans that do not provide any group health benefits; plans that provide group health benefits and have fewer than 100 participants were divided into fully insured group health plans and unfunded, combination unfunded/fully insured plans, or funded with a trust group health plans.

DFEs were divided into Master Trusts/MTIAs, CCTs, PSAs, 103–12 IEs, GIAs, and DCGs. For each of these sets of respondents, burden hours per respondent were estimated for the Form 5500 Annual Return/Report itself and up to seven schedules or the Form 5500-SF (and the Schedule SB, for Form 5500-SF eligible defined benefit pension plans).

The costs for each of the forms and schedules that are part of the Form 5500 Annual Return/Report were also estimated separately. When items on a schedule are required by more than one Agency, the estimated burden associated with that schedule is allocated among the Agencies. This allocation is based on how many items are required by each Agency. The burden associated with reading the instructions for each item also is tallied and allocated accordingly.

The reporting burden for each type of plan is estimated considering the circumstances that are known to apply or that are generally expected to apply to such plans, including plan size, funding method, usual investment structures, and the specific items and schedules such plans

⁴⁸ For purposes of this analysis, multiple-employer plans were treated as single-employer plans.

ordinarily complete. For example, a large single- employer defined benefit pension plan that is intended to be tax-qualified that has insurance products among its investments and whose service providers received compensation above the Schedule C reporting thresholds would be required to submit an annual report completing almost all the line items of the Form 5500, plus Schedule A (Insurance Information), Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), Schedule C (Service Provider Information), possibly Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), and Schedule R (Retirement Plan Information), and would be required to submit an IQPA report. In this way, the Agencies intend to estimate the relative burdens placed on different categories of filers. Burden estimates were adjusted for the final revisions to each schedule, including items added or deleted in each schedule and items moved from one schedule to another.

The DOL has not attributed a recordkeeping burden to the Form 5500 Annual Return/Report in this analysis or in the Paperwork Reduction Act analysis because it believes that plan administrators' practice of keeping financial records necessary to complete the 5500 forms and schedules arises from usual and customary management practices that would be used by any financial entity and does not result from ERISA or Code annual reporting and filing requirements.

The aggregate baseline burden is the sum of the burden per form and schedule as filed prior to this action multiplied by the estimated aggregate number of forms and schedules filed.⁴⁹ The DOL estimated the burden impact of changes in the numbers of filings and of changes made to the various form and the schedules. The burden estimates use data from the Form 5500 Annual Return/Report for plan year 2020, which is the most recent year for which complete data is available.

iii. *Uncertainty*

⁴⁹ Some filers are eligible to file the Form 5500-SF but choose to file a Form 5500 and attach Schedule I and/or other schedules because they find it less burdensome to do so in their situation. Counts of these filings are adjusted to reflect what they would have filed if they had chosen to file the Form 5500-SF.

The SECURE Act created PEPs and directed the DOL and the Department of the Treasury to make available a consolidated reporting option for defined contribution pension plans that meet certain requirements. Due to these final rules designed to implement the SECURE Act, as well as the new Schedule DCG and Schedule MEP, which requires MEPs to indicate the MEP type by checkbox (association retirement plans, PEO plans, PEPs, and other MEPs), the DOL assumes that these entities will identify the type of entity when they file a Form 5500 with the applicable new schedules. However, until they file, the Departments face significant uncertainty about the number of each type of entity and whether they are merely providing coverage in a different manner than was already provided by employers to their employees through single-employer plans or already existing MEPs (including association retirement plans and PEO plans) or whether with the availability of additional commercial arrangements and plans, more employers will establish plans for their employees.

While pooled plan providers have filed a Form PR which lists plans they are forming, they do not report the number of participating employers. Some of the first PEPs to be created would be filing the 2021 Form 5500 series. The submission of the 2021 Forms is underway but not complete. As previously stated, due to the filing deadlines the 2021 Form 5500 dataset is not complete, therefore the DOL is relying on alternative sources and professional judgement to estimate PEPs. The DOL has identified 646,111 defined contribution plans that reported code 3D, of which 531,872 are considered small defined contribution plans filing the Form 5500-SF as possible plans that could join a DCG or a PEP. However, the decision depends not only on cost savings and administrative ease, but also on employers' preferences and perceptions about the advantages and disadvantages of joining either group.

The SECURE Act 2.0, which passed at the end of 2022, allows for the formation of 403(b) PEPs. There is a great deal of uncertainty in how to estimate the impact of this change in the statute due to the lack of data on any such arrangement within the 403(b) universe of plans, and the fact that it is likely that few plans or providers are positioned to act in the short term.

Using the estimates from PEP creation discussed earlier in the analysis (which may not be representative of 403(b) plan/provider), an estimate of roughly 140 employers joining a 403(b) PEPs in future years can be derived by scaling the estimate of the number of employers joining a PEP presented earlier by the ratio of 403(b) plans (20,732) to 401(l)-type plans (621,509).

The Agencies requested information during the proposed rule stage that would help improve its estimates of the numbers of affected entities, employers, and the burdens they would experience, but did not receive comments that would help improve its estimates.

iv. Alternatives

As described above, the DOL changes to Title I annual reporting requirements are primarily designed to implement statutory changes enacted as part of the SECURE Act. The DOL considered several alternative approaches to address these statutory changes, including:

- Retaining the proposed requirement of auditing both a DCG trust and plan level audit.
- Not requiring a plan-level audit and instead requiring just an audit of the DCG's trust.

Retaining the proposed “eligible plan asset” restriction on investments for plans that are part of a DCG. Retaining the proposed requirement that small plans that are part of a DCG must satisfy the small plan audit waiver but not by virtue of enhanced bonding.

Not permitting any brokerage windows in DCGs. Not allowing direct or indirect holding of employer securities.⁵⁰ The cost (or savings) for each of these items, individually or in combination, is difficult to disentangle from the whole given that each of the items interacts with the others. However, as a point of reference, the combination of changes from the proposed rule to the final, which many of the alternatives represent, results in an additional cost savings of \$0.7 million annually, \$2.3 million as adopted vs. \$2.6 million as proposed.

⁵⁰ See accompanying final forms revisions document being published concurrently in the Federal Register from the Agencies titled, Annual Information Return/Report, at Part I. SUPPLEMENTARY INFORMATION, Section D, Overview of Final Form and Instruction Changes and Discussion of Public Comments, Subsection 1, SECURE Act Section 202 DCG Reporting Arrangements, paragraph (b) Eliminating the Single DCG Trust, DCG Trust Audit, and “Eligible Plan Assets” Requirements for All Investments in DCG reporting.

- Including more or fewer questions on the Schedule DCG and the Schedule MEP.⁵¹
- Including more or fewer questions for defined benefit plans on issues under Title IV of ERISA or questions for retirement plans on Code compliance issues.⁵²
- Not adding new content elements to the Schedules of Assets and requiring the Schedules of Assets to be filed in a data-capturable format.⁵³ At the proposal stage at 86 FR 51284 this change was estimated as \$41 million.
- Not changing the methodology for participant count for determining whether a defined contribution retirement plan is subject to the annual reporting requirements applicable to large plans versus small plans.⁵⁴ Not making this change, as noted in Table 4, would lead to \$27.3 million per year higher costs.
- Allowing a DCG with under 100 total participants to file as a small plan rather than requiring all DCGs to generally follow the annual reporting requirements applicable to large plans— i.e., Form 5500-SF or Form 5500, Schedule A (if applicable), Schedule I, Schedule R (if applicable)—no IQPA audit, and no detailed supplemental schedules.⁵⁵

According to the 2021 Form 5500 instructions, the estimated time a defined contribution

⁵¹ See accompanying final forms revisions document being published concurrently in the Federal Register from the Agencies titled, Annual Information Return/Report, at Part I. SUPPLEMENTARY INFORMATION, Section D, Overview of Final Form and Instruction Changes and Discussion of Public Comments, Subsection 1, SECURE Act Section 202 DCG Reporting Arrangements, paragraph (c) Content Requirement for DCG Form 5500 and Subsection 2 Schedule MEP (Multiple-Employer Pension Plan Information) and MEP Reporting.

⁵² See accompanying final forms revisions document being published concurrently in the Federal Register from the Agencies titled, Annual Information Return/Report, at Part I. SUPPLEMENTARY INFORMATION, Section D, Overview of Final Form and Instruction Changes and Discussion of Public Comments, Subsection 3 Internal Revenue Code Compliance Questions and Subsection 5 Additional Defined Benefit Plan Reporting Improvements.

⁵³ See accompanying final forms revisions document being published concurrently in the Federal Register from the Agencies titled, Annual Information Return/Report, at Part I. SUPPLEMENTARY INFORMATION, Section D, Overview of Final Form and Instruction Changes and Discussion of Public Comments, Subsection 6, Schedule H Schedules of Assets Changes and Breakout Categories for Administrative Expenses, paragraph (a) Deferring Schedules of Asset Changes for re-proposal as part of DOL's general Form 5500 improvement project.

⁵⁴ See accompanying final forms revisions document being published concurrently in the Federal Register from the Agencies titled, Annual Information Return/Report, at Part I. SUPPLEMENTARY INFORMATION, Section D, Overview of Final Form and Instruction Changes and Discussion of Public Comments, Subsection 4, Participant-Count Methodology for Determining Eligibility for Small Plan Simplified Reporting Options for Individual Account Plans.

⁵⁵ See accompanying final forms revisions document being published concurrently in the Federal Register from the Agencies titled, Annual Information Return/Report, at Part I. SUPPLEMENTARY INFORMATION, Section D, Overview of Final Form and Instruction Changes and Discussion of Public Comments, Subsection 1, SECURE Act Section 202 DCG Reporting Arrangements, paragraph (c) Content Requirement for DCG Form 5500.

plan may expect to save by filing as a small plan versus a large plan, depending on the combinations of forms required, is up to 24 hours of labor, which is a 75% reduction in resources.⁵⁶

- Requiring non-plan MEWAs and/or non-group health MEWA plans to report the participating plan information on the Form M-1 and Form 5500, respectively.⁵⁷

6. Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), the Agencies solicited comments concerning the information collection request (ICR) included in the revision of the Form 5500 Annual Return/Report.⁵⁸ At the same time, the Agencies also submitted an information collection request (ICR) to the Office of Management and Budget (OMB), in accordance with 44 U.S.C. 3507(d).

The Agencies did not receive comments that specifically addressed the paperwork burden analysis of the information collection requirement contained in the proposed rule.

In connection with publication of the final regulations and final forms revision, the Agencies are submitting an ICRs to OMB requesting a revision of the collections of information under OMB Control Numbers 1210-0110 (DOL), 1545-1610 (IRS), 1212-0057 (PBGC) and 1210-0040 (DOL for SAR) reflecting the final regulations and instruction changes being finalized in this document. The accompanying Notice of Final Forms Revisions includes a separate PRA discussion that includes tables breaking out the average time for filing the Form 5500, Form 5500-SF, and each schedule, broken down by pension plans (sub-grouped by large plans filing the Form 5500, small plan filing the Form 5500, small plan filing the Form 5500-SF), welfare plans that include health benefits (sub-grouped by large plans and small, unfunded,

⁵⁶ Instructions for Form 5500 Annual Return/Report of Employee Benefit Plan, Pg. 79 at <https://www.dol.gov/sites/dolgov/files/EBSA/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500/2021-instructions.pdf>

⁵⁷ See accompanying final forms revisions document being published concurrently in the Federal Register from the Agencies titled, Annual Information Return/Report, at Part I. SUPPLEMENTARY INFORMATION, Section D, Overview of Final Form and Instruction Changes and Discussion of Public Comments, Subsection 1, Subsection 2 Schedule MEP (Multiple-Employer Pension Plan Information) and MEP Reporting.

⁵⁸ 86 FR 51488.

combination unfunded/fully insured, or funded with a trust 5500-SF), welfare plans that do not include health benefits (sub-grouped by large plans filing the Form 5500, small plan filing the Form 5500, small plan filing the Form 5500-SF), and DFEs (sub-grouped by master trusts, CCTs, PSAs, 103–1IEs, GIAs, and DCGs). The discussion also includes a table with the estimated PRA burdens attributable the Form 5500 Annual Return/Report broken down by the portions allocated to the DOL and the IRS. The DOL is also submitting revisions to the Summary Annual Report ICR. A copy of the ICRs may be obtained by contacting the person listed in the PRA Addressee section below. The Agencies will notify the public when OMB approves the ICRs.

A copy of the ICRs may be obtained by contacting the PRA addressee shown. PRA ADDRESSEE: Address requests for copies of the ICRs to James Butikofer, Office of Research and Analysis, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N– 5655, Washington, DC 20210 or email: ebsa.opr@dol.gov. ICRs submitted to OMB also are available at <http://www.RegInfo.gov>.

7. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)⁵⁹ imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act⁶⁰ and are likely to have a significant economic impact on a substantial number of small entities. Unless the head of an agency determines that a final rule will not have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis (FRFA) of the final rule. The DOL has determined that this final rule and final forms revisions are likely to

⁵⁹ 5 U.S.C. 601 *et seq.* (1980).

⁶⁰ 5 U.S.C. 551 *et seq.* (1946).

have a significant economic impact on a substantial number of small entities. Therefore, the DOL has prepared a FRFA.

For purposes of this FRFA, an entity is considered a small entity if it is an employee benefit plan with fewer than 100 participants.⁶¹ The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 et seq.). The basis of EBSA's definition of a small entity for this FRFA is found in section 104(a)(2) of ERISA, which permits the Secretary to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. The DOL has consulted with the SBA Office of Advocacy concerning use of this participant count standard for RFA purposes and has a memorandum of understanding with the Office of Advocacy to use the standard.⁶² The DOL sought comment on the appropriateness of continuing to use this size standard and did not receive any comments on the appropriateness of the size standard.

The following subsections address specific components of an FRFA, as required by the RFA.

i. Need for, and Objectives of the Rule

The DOL is publishing separately today in the Federal Register a notice of final rulemaking, which conform the regulations to the forms and instruction changes being adopted in

⁶¹ While some large employers may have small plans, in general, small employers maintain most small plans. The Form 5500 Annual Return/Report impacts any employer in any private sector industry who chooses to sponsor a plan. The DOL is unable to locate any data linking employer revenue to plans to determine the relationship between small plans and small employers in industries whose SBA size standard is revenue-based. For a separate project, the DOL purchased data on ESOPs that file the Form 5500 and on defined contribution pension plans that file the Form 5500-SF from Experian Information Solutions, Inc. The Experian dataset provides the number of employees for the plan sponsor. By merging these data with internal DOL data sources, the DOL determined the relationship between small plans and small employers in industries whose SBA size standard is based on a threshold number of employees that varies from 100 to 1,500 employees. Based on these data, the DOL estimates that over 97 percent of small retirement plans and over 80 percent of small health plans are sponsored by employers with fewer than 100 employees. The DOL estimates that over 99 percent of small retirement plans and over 97 percent of small health plans are sponsored by employers with fewer than 1,500 employees. Thus, the DOL believes that assessing the impact of these final rules on small plans is an appropriate substitute for evaluating the effect on small entities.

⁶² Memorandum received from the U.S. Small Business Administration, Office of Advocacy on July 10, 2020.

this notice of final forms revisions. The DOL strives to tailor reporting requirements to minimize reporting costs, while ensuring that the information necessary to secure ERISA rights is adequately available.

The optimal design for reporting requirements changes over time. In addition, the technologies available to manage and transmit information continually advance. Therefore, it is incumbent on the Agencies to revise their reporting requirements from time to time to keep pace with such changes. The final forms revisions, and associated DOL regulatory amendments are intended to implement the reporting requirements required by the SECURE Act, taking into account certain recent changes in markets, other laws, and technology, many of which are referred to above in this document.

ii. Public Comments Received

The Agencies received 114 comments on the proposals. The Form 5500 Annual Return/Report and regulations provide for simplified reporting for small plans. These final forms revisions and final regulations provide additional filing options and benefits to small plans. Provisions particularly benefiting small plans include DCGs consolidated reporting option, the change in the participant count methodology for definition of a small defined contribution plan, and reporting for PEPs using the Schedule MEP. Comments for these topics are extensively discuss in sections I.D.1, I.D.2, and I.D.4 of the notice of final forms revisions.

Comments received did not directly address the initial regulatory flexibility analysis (IRFA) nor did the Chief Counsel of Advocacy file a comment on the IRFA.

iii. Affected Small Entities

The rule changes the current method of counting covered participants for purposes of determining when a defined contribution plan may file as a small plan and whether the plan may be exempt from the audit requirement. Specifically, the change allows defined contribution plans to count just the number of participants/beneficiaries with account balances as of the beginning of the plan year, as compared to the current rule that counts all the employees eligible

to participant in the plan. This change allows an estimated 18,699 large defined contribution plans to be re-defined and file as small defined contribution plans. The estimated distribution of these plans by amount of assets is shown in Table 6.

Table 6 - The Majority of Plans Being Reclassified as Small Plans Hold Less Than \$10 Million in Plan Assets

Distribution of Large DC Pension Plans to be Redefined as Small Filers, by Type of Plan and Amount of Assets, 2020				
Amount of Assets	Total	Single-Employer Plans	Multiemployer Plans	Multiple- Employer Plans
Total	18,699	18,350	28	321
None or not reported	100	100	-	-
\$1-24K	278	275	-	3
25-49K	163	163	-	-
50-99K	285	285	-	-
100-249K	717	708	-	9
250-499k	992	980	-	12
500-999K	1,908	1,885	2	21
1-2.49M	5,083	4,996	3	85
2.5-4.9M	4,981	4,890	2	89
5-9.9M	3,124	3,047	1	76
10-24.9M	939	914	1	23
25-49.9M	75	70	1	3
50-74.9M	25	19	6	-
75-99.9M	7	6	1	-
100-149.9M	6	3	2	1
150-199.9M	4	1	3	-
200-249.9M	5	3	2	-
250-499.9M	5	2	3	-
500-999.9M	1	1	-	-
1-2.49B	2	1	1	-

As described in the regulatory impact analysis above, the DOL estimates that 142 DCGs will form in the first year, filing for 20,827 small plans. These plans would no longer need to file a Form 5500 or Form 5500-SF; their DCG filing a complete Form 5500 Annual Return/Report in accordance with its instructions, including the requirement to include the new Schedule DCG for each individual participating plan, would satisfy the reporting requirements for these plans.

There also may be some cases in which sponsors of small defined contribution plans decide to participate in a PEP, which would result in small plans being terminated and merged

into the PEP and no longer filing a Form 5500 or Form 5500-SF. Small employers without a plan could also decide to join a PEP. As discussed above, the DOL is estimating that 3,369 small employers/plans will join a PEP.⁶³

Due to the change in the participant count methodology for defined contribution plans, approximately 631,976 defined contribution pension plans covering fewer than 100 participants with account balances are eligible to comply with annual reporting requirements applicable to small plans, whereas before the change in the participant count methodology approximately 613,290 defined contribution plans were filing as small plans. In total, the DOL estimates there would be now 678,553 small plans where previously were 652,934. Estimates of the number of small pension plans are based on 2020 Form 5500 filing data.

v. Impact of the Rule

While many small plans could experience a reduced burden as a result of the final changes, the 18,699 large plans filing under the current participant count methodology, but who will file as small plans under the new participant count methodology, are the ones who would experience a significant impact.

Specifically, due to the change in the participant count methodology, 18,699 defined contribution plans are re-defined as small plans and eligible for an audit waiver. An estimated 10,714 of those affected plans currently provide the IQPA report and audited financial statements that would save in audit costs under these final rule and final forms revisions.⁶⁴ There is variation in filing requirements based on the characteristics of a plan and types of assets held.

⁶³ For the calculation of the total number of participating employers in PEPs, it is first assumed that 80 percent of all the employers who would participate in a PEP are currently providing benefits through small plans, and that the remaining 20 percent through large plans. This distribution would apply to the registrant that has already exceptionally listed 2,000 employers (which would then be divided in 1,600 small participating plans and 400 large participating plans) and to the other 201 pooled plan providers assumed to be created. It is also assumed that each of these other 201 pooled plan providers would be servicing 11 employers each. Therefore, the total number of small plans participating in a PEP is estimated as: $1,600 + (201 \times 11 \times 0.8) = 3,369$ (rounded).

⁶⁴ To estimate the number of large plans currently providing the IQPA report and audited financial statements the DOL identified the large plans which (1) are most likely to be redefined as small plans, and (2) have filed Schedule H in 2020, as estimated on the 2020 Form 5500 Pension Research Files. Note that an 80 to 120 participant transition provision allows a plan that covers fewer than 100 participants to continue taking advantage of the simplified option or exemption, as applicable, until they reach 121 participants, therefore not all plans with 100 or more participants will file as a large plan in a given year.

However, these plans would no longer need to attach the IQPA report (audit), and other schedules required of large plans with its Form 5500 Annual Return/Report. As described earlier in this document,⁶⁵ the DOL estimates that there could be an audit cost reduction of \$7,500 for each one of these 10,714 plans. Nevertheless, plans may still conduct an audit even if there is no requirement. It is estimated that 25 percent of plans could still conduct an audit. These plans would no longer be required to file the Schedule H, but may need to file the Schedule I. It is possible that affected plans may qualify to file Form 5500-SF, which would further reduce the filing burden; however, the DOL's estimate assumes only a change from Schedule H to Schedule I for the affected plans. The difference in burden between filing Schedule H and Schedule I is estimated to be \$587 per year.⁶⁶

Table 6 above shows that number of plans by the amount of assets in the plans. This shows an estimate of 4,443 plans (those with less than \$1 million in assets) that would see a costs savings of about one percent of plan assets.⁶⁷

The establishment of DCGs, the use of Schedules DCG (\$168 per plan), Schedule MEP (\$18 for most MEPs and \$25 per PEP), and the other changes could impact a substantial number of small plans, as discussed above, but the impacts per plan are small in magnitude and do not meet the qualifications for a significant impact for this analysis.⁶⁸

vi. Duplicate, Overlapping, or Relevant Federal Rules

The DOL is unaware of any relevant Federal rules for small plans that duplicate, overlap, or conflict with these regulations.

⁶⁵ See fn. 47–49 *supra*.

⁶⁶ The methodology DOL uses results in estimates that it will take a pension plan approximately 8 hours to file a Schedule H, compared to approximately two hours to file a Schedule I for comparable plans. The Department multiplies the difference by a labor rate of accountants and auditors of \$108.4. For a description of the Department's methodology for calculating wage rates, see: <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>. For a discussion of the burden estimating methodology see the "Methodology" section starting, *supra*.

⁶⁷ Plan asset data reflects data reported on 2020 Form 5500 filings.

⁶⁸ The Department uses a labor rate of accountants and auditors of \$108.4. For a description of the Department's methodology for calculating wage rates, see: <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>

vii. Description of Steps Taken to Minimize the Impact on Small Entities

These final regulations and related changes to the Form 5500 Annual Return/Report generally implement or otherwise relate to SECURE Act changes to ERISA and the Code, and do not include significant modifications to existing small plan simplified reporting options other than expanding the number of plans that will be eligible for simplified reporting options by reason of the change in the method of counting participants for determining small plans versus large plan status. Small pension plans that are invested in “eligible” plan assets and otherwise meet certain requirements can elect to use a simplified reporting option of filing Form 5500-SF, which was established by regulation in part to comply with provisions of the Pension Protection Act requiring a simplified form of reporting for plans with fewer than 25 participants. Since the majority of small plans required to file an ERISA annual report cover fewer than 25 participants, the simplified reporting option also constitutes the DOL’s efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506 (c)(4).

The DOL, in developing the final changes for Form 5500 filings by DCGs, carried forward an audit waiver for small plans participating in a DCG consolidated Form 5500 filing. We also, in developing the Schedule MEP filing requirements for PEPs and other MEPs, did not expand small plan reporting requirements. We generally limited the information collection to consolidating information collected on the Schedule MEP that is already reported elsewhere by MEPs on the current Form 5500, as discussed elsewhere in this preamble and in the separate notice of final rulemaking being published with this notice. Overall, the DOL believes that the final changes to the reporting requirements reduce the burden on small plans, while allowing the DOL to collect sufficient information for it to fulfill its statutory responsibilities.

8. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.⁶⁹ For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875,⁷⁰ this final rule and final forms revisions do not include any Federal mandate that the DOL expects would result in such expenditures by State, local, or tribal governments, or the private sector.

9. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have “substantial direct effects” on the States, the relationship between the National Government and States, or on the distribution of power and responsibilities among the various levels of government.⁷¹ Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the rule.

In the DOL’s view, these final regulations and final forms revisions would not have federalism implications because they would not have direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government.

Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements being implemented in these

⁶⁹ 2 U.S.C. 1501 *et seq.* (1995).

⁷⁰ Enhancing the Intergovernmental Partnership, 58 FR 58093 (Oct. 28, 1993).

⁷¹ Federalism, *supra* note 6.

rules do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the National Government and the States.

List of Subjects in 29 CFR Part 2520

Accounting, Employee benefit plans, Freedom of information, Pensions, Public assistance programs, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, 29 CFR part 2520 is amended as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 is revised to read as follows:

Authority: 29 U.S.C. 1002(44), 1021–1025, 1027, 1029–31, 1059, 1134, and 1135; and Secretary of Labor’s Order 1–2011, 77 FR 1088. Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Sec. 2520.101-5 also issued under 29 U.S.C. 1021 note; sec. 501, Pub. L. 109-280, 120 Stat. 780; sec. 105(a), Pub. L. 110-458, 122 Stat. 5092. Secs. 2520.102–3, 2520.104b–1, and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note; sec. 1510, Pub. L. 105-34, 111 Stat. 1068.

2. In § 2520.103-1, revise paragraphs (a) introductory text, (a)(2), (b) introductory text, (b)(1), (c)(1), (c)(2)(i), and (c)(2)(ii)(D) and (E) and add paragraphs (c)(2)(ii)(F) and (G) to read as follows:

§ 2520.103-1 Contents of the annual report.

(a) Except as provided in §§ 2520.104-43, 2520.104-51, 2520.104a-6, and 2520.104a-9, the administrator of a plan required to file an annual report in accordance with section 104(a)(1) of the Act shall include with the annual report the information prescribed in paragraph (a)(1) of this section or in the simplified report, limited exemption or alternative method of compliance described in paragraph (a)(2) of this section.

* * * * *

(2) Under the authority of subsections 104(a)(2), 104(a)(3), and 110 of the Act, section 1103(b) of the Pension Protection Act of 2006, and section 202 of the SECURE Act, a simplified report, limited exemption, or alternative method of compliance is prescribed for employee welfare and pension benefit plans, as applicable. A plan filing a simplified report or electing the limited exemption, or an alternative method of compliance shall file an annual report containing the information prescribed in paragraph (b) or (c) of this section, as applicable, and shall furnish a summary annual report as prescribed in § 2520.104b-10.

(b) Contents of the annual report for plans with 100 or more participants electing the limited exemption or alternative method of compliance. Except as provided in paragraphs (d) and (f) of this section and in §§ 2520.103-2, 2520.103-14, and 2520.104-44, the annual report of an employee benefit plan covering 100 or more participants at the beginning of the plan year which elects the limited exemption or alternative method of compliance described in paragraph (a)(2) of this section shall include:

(1) A Form 5500 “Annual Return/Report of Employee Benefit Plan” and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), Schedule MEP (Multiple-Employer Plan), Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), Schedule R (Retirement Plan Information), and other financial schedules described in § 2520.103-10. See the instructions for this form.

* * * * *

(c) ***

(1) Except as provided in paragraphs (c)(2), (d), (e), and (f) of this section, and in §§ 2520.104-43, 2520.104-44, 2520.104-51, 2520.104a-6, and 2520.104a-9, the annual report of an

employee benefit plan that covers fewer than 100 participants at the beginning of the plan year shall include a Form 5500 “Annual Return/Report of Employee Benefit Plan” and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule D (DFE/Participating Plan Information), Schedule I (Financial Information – Small Plan), Schedule MEP (Multiple-Employer Plan), Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information) and Schedule R (Retirement Plan Information). See the instructions for this form.

(2)(i) The annual report of an employee pension benefit plan or employee welfare benefit plan and that covers fewer than 100 participants at the beginning of the plan year and that meets the conditions in paragraph (c)(2)(ii) of this section with respect to a plan year may, as an alternative to the requirements of paragraph (c)(1) of this section, meet its annual reporting requirements by filing the Form 5500-SF “Short Form Annual Return/Report of Small Employee Benefit Plan” and any statements or schedules required to be attached to the form, Schedule MEP (Multiple-Employer Pension Plan), Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information) and Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), completed in accordance with the instructions for the form. See the instructions for this form.

(ii) * * *

(D) Is not a multiemployer plan;

(E) Is not a plan subject to the Form M-1 requirements under § 2520.101-2;

(F) Is not a multiple-employer pension plan that is a pooled employer plan described in section 3(43) of the Act; and

(G) Is not a DCG reporting arrangement described in § 2520.104-51.

* * * * *

3. In § 2520.103-5, revise paragraph (a) introductory text to read as follows:

§ 2520.103-5 Transmittal and certification of information to plan administrator for annual reporting purposes.

(a) *General.* In accordance with section 103(a)(2) of the Act, an insurance carrier or other organization which provides benefits under the plan or holds plan assets, a bank or similar institution which holds plan assets, or a plan sponsor shall transmit and certify such information as needed by the administrator to file the annual report under section 104(a)(1) of the Act and § 2520.104a-5, § 2520.104a-6, or § 2520.104a-9:

* * * * *

4. In § 2520.103-10:

- a. Revise paragraph (a);
- b. Redesignate paragraph (c) as paragraph (d); and
- c. Add a new paragraph (c).

The revisions and addition read as follows:

§ 2520.103-10 Annual report financial schedules.

(a) *General.* The administrator of a plan filing an annual report pursuant to § 2520.103-1(a)(2), the report for a group insurance arrangement pursuant to § 2520.103-2, or the report for a defined contribution group (DCG) reporting arrangement pursuant to § 2520.103-14, shall, as provided in the instructions to the Form 5500 “Annual Return/Report of Employee Benefit Plan,” include as part of the report the separate financial schedules described in paragraph (b) of this section.

* * * * *

(c) *Presentation of investment assets in commingled trusts and direct filing entities (DFEs).* (1) Except as provided in the Form 5500 and the instructions thereto or for filings by

direct filing entities (including DCG reporting arrangements), in the case of assets or investment interests of two or more plans maintained in one trust, entries on the schedule of assets held for investment purposes at the end of the plan year and the schedule of assets acquired and disposed of during the plan year shall be completed by including the plan's allocable portion of the trust.

(2) In the case of direct filing entities (including DCG reporting arrangements) required to file a schedule of assets held for investment purposes at the end of the plan year and the schedule of assets acquired and disposed of during the plan year, the entries on the schedules shall be completed by including the assets held by the DFE or held in the DCG reporting arrangement's trust or trusts for the individual plans that report in the DCG, and shall include the number of plans with an allocable interest in each listed investment.

* * * * *

5. Add § 2520.103-14 to read as follows:

§ 2520.103-14 Contents of the annual report for defined contribution group (DCG) reporting arrangements.

(a) *General.* A defined contribution group reporting arrangement as described in § 2520.104-51(c) ("DCG reporting arrangement" or "DCG") that files a consolidated annual report pursuant to § 2520.104-51 shall include in such report the items set forth in paragraph (b) of this section.

(b) *Contents of the annual report for DCG reporting arrangement.* (1) A Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule DCG (Individual Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), and other applicable financial schedules referred to in § 2520.103-10, completed in accordance with the instructions for the form.

(2) Where some or all of the assets of plans participating in the DCG are held in a pooled separate account maintained by an insurance carrier, or in a common or collective trust maintained by a bank, trust company or similar institution, a copy of the annual statement of assets and liabilities of such account or trust for the fiscal year of the account or trust which ends with or within the plan year for which the DCG's annual report is made is required to be furnished by such account or trust under § 2520.103-5(c). Although the statement of assets and liabilities referred to in § 2520.103-5(c) shall be considered part of the DCG's consolidated annual report, such statement of assets and liabilities need not be filed with the DCG's annual report. See §§ 2520.103-3 and 2520.103-4 for reporting requirements for plans some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution; and see § 2520.104-51(b)(2) for when the term "DCG reporting arrangement" or "DCG" shall be used in place of the term "plan."

(3)(i) Except for employee pension benefit plans that cover fewer than 100 participants at the beginning of the plan year that meet the conditions for being eligible for a waiver of the audit and accountant opinion requirements in section 103(a)(3)(A) of the Act pursuant to § 2520.104-46, the Schedule DCG for each participating plan shall include:

(A) A report of an independent qualified public accountant for the participating plan that meets the requirements in § 2520.103-1(a)(5).

(B) Separate financial statements meeting the requirements of § 2520.103-1(b)(2) if such financial statements and schedules are prepared in order for the independent qualified public accountant to form the opinion required by section 103(a)(3)(A) of the Act and this paragraph.

(C) Notes to the financial statements described in paragraph (b)(1) or (b)(3)(i)(B) of this section, which contain the information set forth in § 2520.103-1(b)(3).

(ii) For purposes of this section, an employee pension benefit plan described in § 2520.103-1(d) will be treated as a plan that covers fewer than 100 participants as of the beginning of the plan year.

(d) *Electronic filing requirement.* See § 2520.104a-2 and the instructions for the Form 5500 “Annual Return/Report of Employee Benefit Plan” for electronic filing requirements. The common plan administrator for each plan whose reporting obligations are satisfied by a DCG filing under this section must maintain an original copy of the DCG filing, with all required signatures, as part of each plan’s records. A single copy of the DCG consolidated Form 5500 filing, that includes all schedules and attachments maintained by the common plan administrator on behalf of all the plans will satisfy this requirement.

6. Add § 2520.104-51 to read as follows:

§ 2520.104-51 Alternative method of compliance for defined contribution group (DCG) reporting arrangements.

(a) *General.* Under the authority of section 110 of the Act and section 202 of the SECURE Act, the administrator of an employee pension benefit plan which meets the requirements of paragraph (b) of this section is not required to file a separate annual report with the Secretary of Labor as required by section 104(a)(1) of the Act.

(b) *Application.* (1) This alternative method of compliance applies only to an individual account or defined contribution pension plan for a plan year in which:

(i) Such plan participates in a defined contribution group (DCG) reporting arrangement described in paragraph (c) of this section; and

(ii) A consolidated annual report containing the items set forth in § 2520.103-14 has been filed with the Secretary of Labor in accordance with § 2520.104a-9 by the common plan administrator (as described in paragraph (c)(2)(iii) of this section) for all of the plans participating in the DCG reporting arrangement (as described in paragraph (c) of this section).

(2) For purposes of this section, the terms “DCG reporting arrangement,” “DCG” or “common plan administrator” shall be used in place of the terms “plan” and “plan administrator,” in §§ 2520.103-3, 2520.103-4, 2520.103-6, 2520.103-9, 2520.103-10 and elsewhere in subpart C of this part and this subpart, as applicable.

(c) *Defined contribution group (DCG) reporting arrangement.* An arrangement is a “DCG reporting arrangement” or “DCG” for purposes of this section only if all plans relying on the DCG consolidated annual report described in paragraph (b)(1)(ii) of this section —

(1) Are individual account plans or defined contribution plans as defined in section 3(34) of the Act;

(2) Have—

(i) The same trustee meeting the requirements set forth in section 403(a) of the Act (“common trustee”);

(ii) The same one or more named fiduciaries designated in accordance with the requirements set forth in section 402(a) of the Act (“common named fiduciaries”), except that nothing in this paragraph (c)(2)(ii) precludes an individual employer from acting as an additional named fiduciary with respect to the individual plan it sponsors, provided that the other named fiduciaries are the same and common to all plans;

(iii) A designated plan administrator as defined in section 3(16)(A) of the Act that is the same plan administrator and common to all plans (“common plan administrator”); and

(iv) Plan years beginning on the same date (“common plan year”);

(3)(i) Provide the same investments or investment options to participants and beneficiaries in all the plans (“common investments or common investment options”);

(ii) A single dedicated brokerage window provided by the same designated registered broker-dealer common to all plans that restricts participant and beneficiary investments solely to assets with a readily determinable fair market value as described in § 2520.103-1(c)(2)(ii)(C) will be treated as a common investment option for purposes of this paragraph (c)(3);

(4) Do not hold any employer securities at any time during the plan year, except that nothing in this paragraph (c)(4) prohibits investments in any employer's publicly traded securities within the otherwise "same investment option" described in paragraph (c)(3);

(5) Are either audited by an independent qualified public accountant (IQPA) or satisfy the audit waiver conditions in § 2520.104-46;

(6) Are not a multiemployer plan; and

(7) Are not a multiple-employer pension plan (including a pooled employer plan described in section 3(43) of the Act and a multiple-employer defined contribution pension plan described in § 2510.3-55 of this chapter).

(d) *Limitations.* The alternative method of compliance set out in this section does not relieve the administrator of a pension plan participating in a DCG reporting arrangement described in paragraph (c) of this section from any other requirements of Title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)), furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513), and furnish a copy of a summary annual report to participants and beneficiaries of the plan, as required by section 104(b)(3) of the Act.

7. In § 2520.104a-5, revise paragraph (a) introductory text to read as follows:

§ 2520.104a-5 Annual reporting filing requirements.

(a) *Filing obligation.* Except as provided in §§ 2520.104a-6 and 2520.104a-9, the administrator of an employee benefit plan required to file an annual report pursuant to section 104(a)(1) of the Act shall file an annual report containing the items prescribed in § 2520.103-1 within:

* * * * *

8. Add § 2520.104a-9 to read as follows:

§ 2520.104a-9 Annual reporting for defined contribution group (DCG) reporting arrangements.

(a) *General.* A defined contribution group (DCG) reporting arrangement described in §2520.104-51(c) that files a consolidated annual report for all the plans participating in the DCG reporting arrangement in accordance with the terms of paragraphs (b) and (c) of this section shall be deemed to have filed such a report in accordance with § 2520.104a-9 for purposes of § 2520.104-51.

(b) *Date of filing.* The consolidated annual report shall be filed within seven months after the close of the common plan year of all the plans participating in the DCG reporting arrangement, unless extended. See “When to file” instructions of the Form 5500 Annual Return/Report.

(c) *Where to file.* The consolidated annual report prescribed in § 2520.103-14 shall be filed electronically in accordance with the instructions to the Annual Return/Report Form.

9. Amend § 2520.104b–10 by:

a. In paragraph (d)(3):

i. Revising the section “Summary Annual Report for (name of plan)”;

ii. In the section “Your Rights to Additional Information”:

A. Add paragraphs 11 and 12;

B. Revise the last undesignated paragraph; and

c. Removing the appendix to the section; and

d. Adding table 1 at the end of the section.

The revisions and additions read as follows:

§ 2520.104b–10 Summary Annual Report.

(d) ***

(3) ***

Summary Annual Report for (name of plan)

This is a summary of the annual report [insert as applicable either Form 5500 Annual Return/Report of Employee Benefit Plan or Form 5500-SF Annual Return/Report of Small Employee Benefit Plan] of [insert name of plan and EIN/PN] for [insert period covered by this report]. The [insert as applicable either Form 5500 or Form 5500-SF] annual report has been filed with the Employee Benefits Security Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA). Your plan is a [insert a brief description of the plan based on the plan characteristic codes listed for the plan on the Form 5500, including whether it is a defined contribution or defined benefit plan, and whether the plan is a pooled employer plan, another type of multiple-employer plan or a single-employer plan].

[If the plan is participating in a DCG reporting arrangement]:

Your plan participates in an annual reporting arrangement that files a consolidated Form 5500 Annual Report for all the separate plans in the arrangement. This summary includes aggregate information on all the participating plans from the consolidated Form 5500. The consolidated Form 5500 also includes a separate schedule (Schedule DCG) that provides specific plan level information for each individual plan, as well as an accountant's report regarding your individual plan, unless the plan is eligible for a small plan audit waiver under Department of Labor regulations. As noted below regarding your rights to additional information, you have a right to receive a copy of the Schedule DCG relating to your plan on request from the plan administrator.

* * * * *

Your Rights to Additional Information

* * * * *

11. a Schedule DCG for plans participating in a consolidated group Form 5500 filing that includes your plan sponsor's name, EIN, plan administrator's name, EIN and telephone number, total number of participants in your plan, and basic financial information about the plan.)

12. a Schedule MEP, including name and EIN of the employers participating in the MEP, each participating employer's percentage of the total contributions (employer and employee) made by all employers participating in the MEP and, for defined contribution pension plans only, the aggregate account balance for each of the employers participating in the MEP.)

* * * * *

You also have the legally protected right to examine the annual report at the main office of the plan (address), (at any other location where the report is available for examination), and at the U.S. Department of Labor in Washington, D.C., or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department should be addressed to: Public Disclosure Room, Room N-1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The annual report is also available online at the Department of Labor website www.efast.dol.gov.

* * * * *

Table 1 to §2520.104b-10—The Summary Annual Report (SAR) Under ERISA: A

Cross-Reference to the Annual Report

SAR item	Form 5500 large plan filer line items	Form 5500 small plan filer line items	Form 5500-SF filer line items
A. PENSION PLAN:			
1. Funding arrangement	Form 5500-9a	Same	Not applicable.
2. Total plan expenses	Sch. H-2j	Sch. I-2j	Line 8h.
3. Administrative expenses	Sch. H-2i(5)	Sch. I-2h	Line 8f.
4. Benefits paid	Sch. H-2e(4)	Sch. I-2e	Line 8d.
5. Other expenses	Sch. H-Subtract the sum of 2e(4) & 2i(5) from 2j	Sch. I-2i	Line 8g.
6. Total participants	Form 5500-6f	Same	Line 5b.
7. Value of plan assets (net):			
a. End of plan year	Sch. H-11 [Col. (b)]	Sch. I-1c [Col. (b)]	Line 7c [Col. (b)].
b. Beginning of plan year	Sch. H-11 [Col. (a)]	Sch. I-1c [Col. (a)]	Line 7c [Col. (a)].
8. Change in net assets	Sch. H-Subtract 11 [Col. (a)] from 11 [Col. (b)]	Sch. I-Subtract 1c [Col. (a) from Col. (b)]	Line 7c-Subtract Col. (a) from Col. (b).
9. Total income	Sch. H-2d	Sch. I-2d	Line 8c.

a. Employer contributions	Sch. H-2a(1)(A) & 2a(2) if applicable	Sch. I-2a(1) & 2b if applicable	Line 8a(1) if applicable.
b. Employee contributions	Sch. H-2a(1)(B) & 2a(2) if applicable	Sch. I-2a(2) & 2b if applicable	Line 8a(2) & 8a(3) if applicable.
c. Participating employer's percentage of the total contributions (employer and employee) made by all employers participating in a MEP	Sch. MEP Line 2c	Sch. MEP Line 2c	Not applicable
d. Aggregate account balance of the employer participating in a defined contribution MEP (determined as the sum of the account balances of the employees of such employer (including the beneficiaries of such employees))	Sch. MEP Line 2d	Sch. MEP Line 2d	Not applicable
e. Gains (losses) from sale of assets	Sch. H-2b(4)(C)	Not applicable	Not applicable.
f. Earnings from investments	Sch. H-Subtract the sum of 2a(3), 2b(4)(C) and 2c from 2d	Sch. I-2c	Line 8b.
11. Total insurance premiums	Total of all Schs. A-6b	Total of all Schs. A-6b	Not applicable.
12. Unpaid minimum required contribution (S-E plans) or Funding deficiency (ME plans):			
a. S-E Defined benefit plans	Sch. SB-39	Same	Same.
b. ME Defined benefit plans	Sch. MB-10	Same	Not applicable.
c. Defined contribution plans	Sch. R-6c, if more than zero	Same	Line 12d.

13. Individual plan information for plans participating in a DCG reporting arrangement.	Schedule DCG	Not applicable	Not applicable
B. WELFARE PLAN			
1. Name of insurance carrier	All Schs. A-1(a)	Same	Not applicable.
2. Total (experience rated and non-experienced rated) insurance premiums	All Schs. A-Sum of 9a(1) and 10a	Same	Not applicable.
3. Experience rated premiums	All Schs. A-9a(1)	Same	Not applicable.
4. Experience rated claims	All Schs. A-9b(4)	Same	Not applicable.
5. Value of plan assets (net):			
a. End of plan year	Sch. H-11 [Col. (b)]	Sch. I-1c [Col. (b)]	Line 7c [Col. (b)].
b. Beginning of plan year	Sch. H-11 [Col. (a)]	Sch. I-1c [Col. (a)]	Line 7c [Col. (a)].
6. Change in net assets	Sch. H-Subtract 11 [Col. (a)] from 11 [Col. (b)]	Sch. I-Subtract 1c [Col. (a)] from 1c [Col. (b)]	Line 7c-Subtract [Col. (a)] from 7c [Col. (b)].
7. Total income	Sch. H-2d	Sch. I-2d	Line 8c
a. Employer contributions	Sch. H-2a(1)(A) & 2a(2) if applicable	Sch. I-2a(1) & 2b if applicable	Line 8a(1) if applicable.
b. Employee contributions	Sch. H-2a(1)(B) & 2a(2) if applicable	Sch. I-2a(2) & 2b if applicable	Line 8a(2) if applicable.
c. Gains (losses) from sale of assets	Sch. H-2b(4)(C)	Not applicable	Not applicable.
d. Earnings from investments	Sch. H-Subtract the sum of 2a(3), 2b(4)(C) and 2c from 2d	Sch. I-2c	Line 8b.

8. Total plan expenses	Sch. H-2j	Sch. I-2j	Line 8h.
9. Administrative expenses	Sch. H-2i(5)	Sch. I-2h	Line 8f.
10. Benefits paid	Sch. H-2e(4)	Sch. I-2e	Line 8d.
11. Other expenses	Sch. H-Subtract the sum of 2e(4) & 2i(5) from 2j	Sch. I-2i	Line 8g.

Signed at Washington, D.C., this 2nd day of February, 2023.

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